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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF MISSOURI, *et al.*,
Petitioners,

v.

KALIMA JENKINS, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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JOINT APPENDIX

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

No. 77-0420-CV-W-4

KALIMA JENKINS, *et al.*,
Plaintiffs,

vs.

STATE OF MISSOURI, *et al.*,
Defendants.

GENERAL MEMORANDUM AND ORDER

Background

This school desegregation case was filed in 1977 by the Kansas City Missouri School District (KCMSD), its school board and superintendent, and students of the KCMSD. Plaintiffs sought a metropolitan desegregation plan in the greater Kansas City area encompassing two states and seven counties. Named as defendants were the states of Missouri and Kansas, their state boards of education, nineteen school districts and three federal agencies. Plaintiffs alleged the numerous defendants failed to carry out their affirmative duties to eradicate segregation in the metropolitan area and have actually contributed to segregation by individual and concerted actions.

On October 6, 1978 the Court dismissed the Kansas defendants for lack of jurisdiction and realigned the KCMSD as a defendant. *See*, 460 F.Supp. 421 (W.D. Mo. 1978). Plaintiff school children filed an amended complaint on May 18, 1979 naming as defendants Mis-

souri, its Board of Education, thirteen Missouri school districts including the KCMSD, and three federal agencies seeking metropolitan desegregation and relief from the segregated conditions in the KCMSD. On July 3, 1979 the KCMSD filed a cross-claim against the state of Missouri alleging it failed to carry out its affirmative duty to eradicate the vestiges of its pre-1954 dual school system.

Before the trial to the Court commenced on October 31, 1983, the Raymore-Peculiar School District and the United States Department of Transportation were dismissed by stipulation.

On the 64th day of trial, March 6, 1984, after offering over 2,100 exhibits, calling over 140 witnesses and designating over 10,000 pages of depositions, plaintiffs rested. (*See* Tr. pp. 101-16,372). At the close of plaintiffs' case and before the KCMSD presented evidence on its cross-claim against the state, all defendants except the KCMSD moved for dismissal pursuant to Rule 41(b), Fed.R.Civ.P. This memorandum embodies findings applicable to all suburban school districts, an overview of plaintiffs' theories, and the Court's conclusions of law. Findings of fact notable to each district are in separate sections. References to the defendants in this order, unless otherwise indicated, refer to the suburban school district defendants.

The Court has reviewed the entire record, and has reached its judgment after consideration of the live testimony, the demeanor, believability and credibility of the witnesses, all of the exhibits, the designated depositions and interrogatory answers filed by plaintiffs. In addition, the Court took judicial notice from time to time of various matters and has considered all such matters in reaching its judgment. The Court has also reviewed plaintiffs' offers made both on the record and in writing and concludes there is no credible evidence that would alter the judgment rendered herein.

Even considering all the exhibits which were not admitted but merely received for the record, the Court still

concludes there is no credible or substantial evidence of a constitutional violation by these SSDs.

A study of plaintiffs' witnesses' testimony both at trial and by deposition reveals that none identified any acts of the SSDs done with the intent to discriminate on the basis of race, to contain blacks in the KCMSD, or to keep blacks out of the SSDs. Witness after witness, including witnesses who had been actively involved in the promotion of civil rights, testified that they knew of *no* acts by the SSDs that were done with a discriminatory intent. (*See, e.g.*, Lucille Bluford (Editor of the *Kansas City Call*, Kansas City's leading black newspaper) (Tr. 3125, 3127, 3129); Dr. Edward Fields (longtime black KCMSD administrator (Tr. 2076-77); James McCreary (longtime KCMSD black administrator) (Tr. 13,743); Joyce Stark (KCMSD School Board President) (Depo. at 111-12, 124-125, 150, 181); and Robert Wheeler (KCMSD black superintendent) (Depo. at 21-22, 24, 29-30, 41, 49).

Procedural Posture

The Court deferred ruling the Rule 41(b) motions of the State of Missouri and HUD. Because of this ruling, Missouri commenced its defense on April 2 and continued until April 18, 1984. When the case resumed on May 7, HUD began its defense.

In regard to HEW,* the motion was deferred on April 2 to give the Court an opportunity to more fully assess plaintiffs' evidence against it. After due consideration, and before any defense by the federal government, the Court on April 18 granted HEW's Rule 41(b) motion. Those findings of fact and conclusions of law will be set forth in a separate order.

*** The Court realizes HEW was dismantled by Congress in 1979 and was succeeded by Health and Human Services and the Department of Education. *See*, 20 U.S.C. §§ 3401-3510 (1979). However, because HEW, not the Dept. of Education, is the subject of plaintiffs' allegations, the Court will continue to refer to the agency as HEW.**

For the purposes of the Rule 41(b) motions, "[t]he Court is not to make any special inferences in the plaintiff's favor nor concern itself with whether plaintiff has made out a prima facie case. Instead it is to weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies." 9 C. Wright & A. Miller, *Federal Practice and Procedure* § 2371 at 224-25 (1971). The Court has made detailed findings of fact in support of its judgment, *see* Rule 52, Fed.R.Civ.P., and has applied the standards set forth in *Shull* v. *Dain, Kalman & Quail, Inc.*, 561 F.2d 152, 155 (8th Cir. 1977), *cert. denied*, 434 U.S. 1086 (1978). The Court in *Shull* declared, "The district court may find the facts itself and may render judgment against the plaintiff if the Court considers that plaintiff has not made out a case, and if the district court sustains the Rule 41(b) motion, its findings will not be reversed on appeal unless clearly erroneous." *Id. See also, Lang* v. *Cone*, 542 F.2d 751, 754 (8th Cir. 1976). Based on these standards, the Court finds that plaintiffs have not proven a case against any of the suburban school district defendants. Because the Court must make specific findings as directed in Rule 52, Fed.R.Civ.P., and to aid in appellate review, *Lora* v. *Board of Education*, 623 F.2d 248, 261 (2d Cir. 1980), it has made page citations to the 65-volume transcript and 130 depositions.

All defendants except the KCMSD filed Rule 41(b) motions at the close of plaintiffs' case, and the Court's decision regarding the SSDs was entered before any defense was initiated. The Court did proceed, before a recess, with the KCMSD's cross-claim against the State of Missouri, but with the understanding that "once plaintiffs rested, they rested." (*See, e.g.*, Tr. 13,859). Despite the Court's clear pronouncement that none of the evidence adduced during the cross-claim would be considered in ruling the 41(b) motions, plaintiffs repeatedly rose during the presentation of evidence to "join in the offer" for support of its case in chief. Even if the Court were

to consider the evidence presented by the KCMSD in its cross-claim, there was nothing in that evidence that would aid plaintiffs' case against the SSDs. That evidence by the KCMSD was not persuasive to the Court insofar as it was arguably relevant to the suburban school districts.

Theories

Plaintiffs' theories involving the SSDs are three-fold: first, that the SSDs, as agents of the state, were guilty of operating a regional system of segregated schools that centered on and impacted Kansas City with blacks and made the suburbs whiter before 1954; second, that the SSDs failed in their affirmative duty to eliminate the vestiges of the dual school system; and third, that the SSDs are liable for the effects of actions by the KCMSD and other defendants and can therefore be included in an interdistrict remedy. Essentially, plaintiffs seek the realignment or consolidation of the existing KCMSD and surrounding SSDs, which would purportedly produce an integrated educational environment for each child attending school in the KCMSD and surrounding school districts. These theories, when considered in light of the evidence and the prevailing legal standards, must be rejected.

Because this is an interdistrict case, all the evidence comprising this voluminous record must be weighed by that standard. Intradistrict cases are inapplicable. The linchpin of an interdistrict case, as declared by the Supreme Court, is whether there has been a racially discriminatory act by each defendant that substantially caused segregation in another district. *Milliken* v. *Bradley*, 418 U.S. 717, 745 (1974) (Milliken I).

Boundaries

Plaintiffs seek to racially balance the public school population in the metropolitan area. As *Milliken* explained, however, plaintiffs' only right is to attend school in a unitary school system in the district in which they

reside, not to attend school in a racially balanced metropolitan area. 418 U.S. at 746-47. There is a tremendous distinction between looking at racial imbalance as evidence of a segregated school system in an *intra*district case and equating racial imbalance on an *inter*district basis to a constitutional violation: "[T]he use of significant racial imbalance in schools *within* an autonomous school district as a signal [in intradistrict cases] which operates to shift the burden of proof is a very different matter from equating racial imbalance [between two school systems in an interdistrict case] with a constitutional violation calling for a remedy." *Milliken*, 418 U.S. at 741 n.19 (emphasis added). *See also, Lee* v. *Lee County Board of Education*, 639 F.2d 1243, 1254-55 (5th Cir. 1981). This being an interdistrict case necessarily requires rejection of intradistrict presumptions.

In order for plaintiffs to prevail, they had to prove that the school district boundaries as originally established or later maintained, evidenced a racially discriminatory motivation; inferences from discriminatory impact would not suffice. *Washington* v. *Davis*, 426 U.S. 229 (1976). Lack of proof of discriminatory intent in the establishment or changing of any school district boundary lines requires the Court to reject plaintiffs' arguments and effectively distinguishes the interdistrict cases granting relief upon which plaintiffs rely. *Cf. Morrilton School District No. 32* v. *United States*, 606 F.2d 222, 225-27 (8th Cir. 1979), *cert. denied*, 444 U.S. 1071 (1980); *United States* v. *Missouri*, 515 F.2d 1365 (8th Cir.), *cert. denied*, 423 U.S. 951 (1975) (the *Kinloch* litigation); and *Haney* v. *County Board of Education*, 410 F.2d 920 (8th Cir. 1969) (pre-Milliken). All of these Eighth Circuit cases evidenced racial gerrymandering, an action specifically recognized in *Milliken* as justification for an interdistrict remedy. 418 U.S. at 745. It is axiomatic, however, that absent a constitutional violation in one district producing a significant segregative effect in another district, the

boundaries of separate and autonomous school districts must be respected. *Id.* at 745-46.

The hub, therefore, of plaintiffs' argument is that the SSDs are not separate and autonomous but are instead agents of the state whose boundaries are constantly disregarded and can therefore be ignored in fashioning an appropriate remedy. Guided once again by *Milliken*, plaintiffs' position is rejected:

> Boundary lines may be bridged where there has been a constitutional violation calling for interdistrict relief, but the notion that school district lines may be casually ignored or treated as a mere administrative convenience is contrary to the history of public education in our country. No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process. (citations omitted).

418 U.S. at 741-42. Applying the local control measure to Detroit, the Supreme Court concluded there were no constitutional violations by those districts that would justify "consolidation of 54 independent school districts historically administered as separate units into a vast new super school district." 418 U.S. at 743. A review of school district existence in Missouri leads the Court to conclude the SSDs are more autonomous than those discussed in *Milliken* and numerous other desegregation cases.

Local Autonomy

Establishment of school district boundaries in Missouri is controlled at the local level to a greater degree than in Michigan. *Compare* Mo. Rev. Stat. §§ 162.222, 162.441 (1978), § 162.431 (Supp. 1983) (requiring approval of the qualified voters in each school district affected) *with*

Bradley v. *Milliken,* 484 F.2d 215, 247-48 (6th Cir. 1973) (Michigan school districts are not highly locally autonomous because of various Michigan statutes giving the Michigan State Board of Education the power to change boundary lines and to merge school districts), *rev'd,* 418 U.S. 717 (1974). The state of Missouri does not have the power to require a merger or consolidation of school districts. Based upon a review of Missouri statutes and those cited by the Supreme Court in *Milliken,* 418 U.S. at 742, and those relied on by the Sixth Circuit in *Bradley* v. *Milliken,* 484 F.2d 215, the Court finds that Missouri school districts have *more* authority and autonomy than Michigan school districts. The independence of the local districts in Michigan was sufficient for the Supreme Court to conclude interdistrict relief was improper.

The Court finds that school districts in Missouri are governed by locally elected boards of education and have the authority and autonomy to control boundaries, curriculum, finance and administrative matters. Based on these facts, and on a review of the facts relied upon in *Lee* v. *Lee County Board of Education,* 639 F.2d 1243, 1256 (5th Cir. 1981), the Court finds that the school districts in Missouri have at least as much independence and autonomy as school districts in Alabama where interdistrict relief was denied.

Public education in Missouri is structured differently than public education in Indiana. In Indiana, the state has far more authority and control over school district boundaries. For instance, in *United States* v. *Board of School Commissioners,* 637 F.2d 1101, 1124-25 (7th Cir), *cert. denied,* 449 U.S. 838 (1980), the court found that legislation affecting the boundary lines of the Indianapolis Public Schools had been enacted with a racially discriminatory purpose. There is no such evidence here.

Public education in Missouri is also structured differently than public education in Delaware. There, the state has

substantially more authority and control over local school district internal matters and school district boundaries. *See, e.g., Evans* v. *Buchanan,* 393 F.Supp. 428, 438 (D. Del.), *aff'd mem.* 423 U.S. 963 (1975). In *Evans,* the court determined that the enactment of the Education Advancement Act violated the Equal Protection Clause of the 14th Amendment.

Likewise, public education in Missouri is structured differently than public education in Kentucky. There, the court referred to school district lines as being "artificially drawn." *Newburg Area Council* v. *Board of Education,* 510 F.2d 1358, 1360 (6th Cir. 1974), *cert. denied,* 421 U.S. 931 (1975). A Kentucky statute authorized reconsolidation of school districts within a single county even without consent of the county school board. Also, the court found evidence that the school district boundaries had been ignored in the past for the purpose of aiding and implementing continued segregation.

There was no credible evidence that any of the boundaries of any defendant school district were established or maintained with any racially discriminatory intent. The only evidence regarding boundaries concerned the KCMSD and Independence, over the Van Horn attendance area, and is discussed *infra.* The boundaries have been properly established and maintained by each SSD, and each district manages its own school affairs within its own boundaries. Establishment of school district boundaries is a local matter in Missouri, and the Court finds that each of the boundaries of the school districts involved in this case were established through local initiatives, with no taint of any racial animus. This fact alone distinguishes the instant case from many upon which plaintiffs rely including *Newburg, Evans, Hoots* v. *Pennsylvania,* 672 F.2d 1107 (3d Cir.), *cert. denied,* 103 S.Ct. 55 (1982) and *Morrilton School District No. 32* v. *United States,* 606 F.2d 222 (8th Cir. 1979), *cert. denied,* 444 U.S. 1071 (1980).

Reviewing plaintiffs' evidence, the Court is not persuaded by the testimony of Raphael Nystrand to the effect that Missouri school districts do not have local control of education. Mr. Nystrand based his opinion on standards set by the federal government and private accrediting agencies, entities over which the state of Missouri has no control. (Tr. 6177-78). Actions by these entities have no effect on the autonomy of Missouri school districts. Moreover, Mr. Nystrand agreed that no single tradition in public education was more deeply rooted than local control. (Tr. 6178). Indeed, he agreed that the principles of local control are a significant theme in school politics across the nation. (Tr. 6195-96).

The Court finds that local school districts in Missouri have the following characteristics, powers and authority:

1. School districts are governed by local boards of education that are elected by the voters residing in the district. (Tr. 6179).

2. School districts, not the state, hire superintendents and teachers. (Tr. 6179-80).

3. School districts, by a vote of the residents, establish their own tax levy. (Tr. 6180; P. Ex. 1737).

4. Reorganization is a decision made by the local school district; a reorganization plan could be submitted to the voters of a school district even though the Missouri State Board of Education did not approve the plan and the voters could adopt or reject the reorganization. (Tr. 6184).

5. The Constitution of Missouri, Art. 3, § 20, prohibits the General Assembly from enacting "any special law changing the boundaries . . . of any school districts." (Tr. 6181).

6. Local school districts have the plenary power to establish school attendance zones (e.g. P. Ex. 2267).

7. Local school districts determine whether to provide transportation for their students. (Lowell Depo. at 6).

The Court also finds that the Office for Civil Rights, the federal agency in charge of monitoring civil rights compliance of local school districts, has always recognized the local autonomy of Missouri school districts and treated the school districts accordingly. (High Depo. Vol. I at 65, 70, 110-111; Ward Depo. Vol. I at 30).

Another strong indication supporting the Court's conclusion that the local school boards are autonomous entities is the fact that the school boards are not afforded Eleventh Amendment immunity as an agent of the state but must be sued instead in their own names. *Mount Healthy City School District* v. *Doyle*, 429 U.S. 274 (1977); *Miener* v. *Missouri*, 673 F.2d 969 (8th Cir.), *cert. denied*, 103 S.Ct. 215 (1982).

The autonomy of the local districts is evidenced in the pre-1954 period by each local school district deciding whether to educate their black students, if any, at schools within the district or to transfer them to schools in another district. (Tr. 372, 378, 622, 624, 696-97, 871-72, 1084-86, 1124, 1126, 1136-1138, 1154, 1199, 5837 and P. Ex. 1814). Local school districts also made the decision whether to educate white students at schools within their district, to operate a high school in the district, or to transfer their high school students to high schools in another district. (Tr. 335-36). A school district, in its discretion, could refuse to accept transfer students, both black and white and usually considered tuition costs and space in making such decisions. (P. Ex. 1768, P. Ex. 1769). Each school district receiving transfer students established their own rules or regulations to apply to those students' education. (P. Ex. 1774).

Having reviewed hundreds of minutes from various boards of education in this case, the Court is fully convinced, and hereby finds, that each of the school districts

is a locally autonomous and independent entity. Because each defendant district is independent and autonomous from the state of Missouri, and from all other school districts, none has an affirmative duty to merge with other districts. None can be held vicariously liable for the acts of the state, federal government or other entities. And, absent a finding of an interdistrict constitutional violation, none can be made a part of an interdistrict remedy.

In regard to the first theory, plaintiffs point to interdistrict student transfers made by some of the SSDs pursuant to state mandate before *Brown* v. *Board of Education*, 349 U.S. 483 (1954) (*Brown I*). The fact that such transfers were made before the Supreme Court declared separate schools unconstitutional does not entitle plaintiffs to relief. Instead, plaintiffs had to prove first that the segregated schools existing before 1954 were the direct and substantial cause of blacks leaving *each* defendant district; second, assuming that occurred, that it had a significant segregative effect in the KCMSD. *See*, 418 U.S. at 744-45; *Lee*, 639 F.2d at 1256 ("there must be clear proof of cause and effect and a careful delineation of the extent of the effect"). Plaintiffs' proof was weak, speculative and in any event *de minimus*.

The "vestiges" theory also fails. First, the affirmative duty to eliminate vestiges is premised upon the notion that each defendant district produced the segregation sought to be eliminated and therefore has a duty to undo its damage. Second, the affirmative duty plaintiffs would impose (assuming one exists) is far more expansive than that required by the Constitution. The Court in *Milliken* articulated the parameters of a school district's obligation when it declared, "the constitutional right of the Negro respondents residing in Detroit is to attend a unitary school system *in that district*." 418 U.S. at 746. (emphasis added). Thus, the KCMSD and each SSD has an obligation to provide a unitary school system in *their* respective districts. Failure to dissolve, merge, legislate, cooperate or entice blacks into their districts does not, as

plaintiffs suggest, evidence a constitutional violation for which this Court can mandate an interdistrict remedy. Such actions may be urged by social scientists but that does not create a constitutional duty. While minds, like parachutes, work best when open, the Court cannot judicially create openmindedness nor impose an obligation absent a constitutional violation.

In regard to the "effect" theory, plaintiffs suggest in their amended complaint that, "as agents and subdivisions of the state, the defendant school district . . . must be included in an interdistrict remedy, even absent any finding that they have committed specific violations on their own initiative." Such a "no-fault" position was argued by Justice Marshall dissenting in *Milliken*:

> Nor should it be of any significance that the suburban school districts were not shown to have themselves taken any direct action to promote segregation of the races. Given the state's broad powers over local school districts, it was well within the State's powers to require those districts surrounding the Detroit school district to participate in a metropolitan remedy.

418 U.S. at 807. The majority considered and rejected this position demanding instead there be a violation, or *cause*, by each defendant district as well as an interdistrict *effect*:

> Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, *it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district*. Specifically, it must be shown that racially discriminatory acts of the state or local school districts, or of a single school district have been a substantial cause of interdistrict segregation. Thus an interdistrict remedy might be in order where

> the racially discriminatory acts of one or more school districts caused racial segregation in an adjacent district, or where district lines have been deliberately drawn on the basis of race. In such circumstances an interdistrict remedy would be appropriate to eliminate the interdistrict segregation directly caused by the constitutional violation. *Conversely, without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy.*

418 U.S. at 744-45 (emphasis added).

While it may be within the province of another Court to review and rewrite the standard, it is this Court's obligation and duty to apply the law, as presently composed, to the facts of this case. That application compels the Court to reject plaintiffs' theories and grant the suburban school district defendants' motions for judgment pursuant to Rule 41(b).

I. Pre-1954 Evidence

The defendants admitted, and the Court judicially noticed, that Missouri mandated segregated schools for black and white children before 1954. *See,* MO. CONST. Art. IX, § I(a) (1945) (rescinded 1976) *and* §§ 163.130, 165.117 R.S.MO (repealed 1957). These provisions were not immediately and formally abrogated after the *Brown* decision was announced; however, the State's Attorney General issued an Opinion in 1954 declaring them unenforceable. (P. Ex. 2232). The statutes were repealed in 1957 and the constitutional provision was finally rescinded in 1976. This historical background is recounted in more detail by the courts in *Adams* v. *United States,* 620 F.2d 1277, 1280-81 (8th Cir.) *cert. denied,* 449 U.S. 826 (1980); and *United States* v. *Missouri,* 363 F.Supp. 739, 746-47 (E.D. Mo. 1973) *aff'd* 515 F.2d 1365 (8th Cir.) *cert. denied,* 423 U.S. 951 (1975).

Plaintiffs argued that in response to this mandate, Missouri through its agents, the SSDs, maintained a regional

black interdistrict school system causing blacks to leave the SSDs and migrate to Kansas City in search of an education. Plaintiffs' argument is not supported by the law or the evidence. While the law required separate schools to be provided, it did not require separate school districts. *Compare, Bradley* v. *School Board,* 462 F.2d 1058, 1065 (4th Cir. 1972) *aff'd* 412 U.S. 92 (1973). The manner in which blacks in any defendant district were educated was solely a matter of local control and within the discretion of the local school district. (Tr. 5837; P. Ex. 1814). As discussed *supra,* each defendant district was, and is, an autonomous entity not, as plaintiffs suggest, an agent of the state.

The major support for plaintiffs' case came from various lay witnesses and the opinions of an expert historian, Dr. Anderson. According to Dr. Anderson, segregated schools were legally mandated for most or all of the years from 1889 to 1954. (Tr. 4223-24). This fact, so plaintiffs' theory goes, would compel blacks in the three-county area surrounding Kansas City to migrate to schools in Kansas City in significant numbers. From 1910 to 1920, a time when Dr. Anderson testified the depopulation had begun in earnest, the number of blacks enumerated in the three-county area decreased by 287 people yet the number of blacks enumerated in the KCMSD increased by 6,676 people. From 1930 to 1960, the black population in the three-county area (excluding the KCMSD) decreased by approximately 550 people. During that same time period, the black population in the KCMSD increased by approximately 45,000 people. (Tr. 4573-74). Even assuming the entire decrease in the three-county area can be accounted for only by people leaving and going to Kansas City because of the dual school system, the Court finds the impact of that movement on the KCMSD enumeration insignificant. (P. Ex. 53E[sub]).

The Court is not persuaded by Dr. Anderson's opinion that the greatest number of the blacks coming into

Kansas City from 1865 to 1954 did not come from the deep south but came instead from inside Missouri. (Tr. 4458-59).

The Court finds that contrary to Dr. Anderson's opinion, blacks in the three-county area outside of Kansas City and the towns of Liberty, Independence and Excelsior Springs were mostly rural, farm-dependent families. (Tr. 331, 454, 526, 796, 901-906, 935, 952, 1008, 1052, 1089, 1100-1103, 1105, 3139, and 3165-66).

A school district's enumeration counts the number of people between the ages of six and twenty residing in the district. (Campbell Depo. at 165). In 1881 blacks comprised 13.6% of the KCMSD enumeration while in 1954 blacks comprised 14.0% of the KCMSD enumeration, (P. Ex. 53E[sub]), an increase over the entire period of only .4%. (Tr. 4215).

Plaintiffs' evidence of transfers from suburban school districts to the KCMSD from 1900 to 1954 resulted in a total of only 251 students. (Tr. 4557-59). The Court finds that as of 1954, less than .5% of the total number of black students enrolled in the KCMSD black schools were from other districts and included students from non-party defendant districts. (Tr. 2043). The number of black students that attended Lincoln High School prior to 1954 from school districts other than the KCMSD was insignificant when compared to the total number of black students that attended Lincoln. (Tr. 1773). In 1954-55, the black enrollment in the entire KCMSD was only 18.8%. (Def. Ex. K2). And for every year prior to 1970, the enrollment in the KCMSD remained majority white. (Tr. 3352, D. Ex. K2).

Plaintiffs attempted to bolster their depopulation theory by introducing a list of 44 names compiled by Marvin Robinson purporting to show individuals that were transferred to Lincoln High School before 1954 and subsequent to their transfer lived in Kansas City. The Court finds the list does not show a connection between black

schools in Kansas City and the movement of blacks into Kansas City. As made apparent on cross-examination, a number of the people on the list now live in Independence or other places throughout the United States; some people on the list lived in Kansas City for only a short period of time; some did not even move to Kansas City until after 1954. Nor was there credible evidence as to why these 44 people moved to Kansas City. (Tr. 2163-64, 2168, 2170-81). The total is insignificant in any event.

The most significant pre-1954 increases in the KCMSD black enumeration took place during the World War I (from 1910 to 1920 an increase of 6,676) and World War II periods (from 1940 to 1950 an increase of 3,223). Dr. Anderson admitted that the world wars were factors that brought blacks into the KCMSD, and the Court finds that the substantial increases in the KCMSD black population are in large part due to the unusual economic and employment ramifications of the world wars and intervening depression. (Tr. 5932-34, 9988-90).

The most rapid and substantial increases in black students in the KCMSD occurred after 1954 and through the 1960's. (Tr. 1797-98, P. Ex. 2638). Dr. Anderson, who admitted that he could not accurately quantify the effect the prior segregated schools had on black people moving (Tr. 4332-34), testified that jobs and economics were certainly factors causing blacks to move to Kansas City. (Tr. 4486, 4605). Plaintiffs' black lay witnesses also confirmed the importance of job location and economic opportunity in their decisions to move. (Tr. 595, 600, 676-78, 713, 796, 911, 1052, 1089, 1103, 1111, 1163, 1307, 1312, 1318, 1552, 1579-80, 1680-81, 1728, 2781, 3214, and 3267). The Court finds that jobs and economic opportunity were primary motivators for blacks leaving the three-county area and moving to Kansas City and elsewhere, and that any motivation resulting from segregated schools was *de minimis* and insignificant when compared to those primary motivating factors. The Court further finds that transferring blacks to the KCMSD

under the prior segregated school system is not a cause of the present racial distribution of the population in the three-county area. Many of plaintiffs' lay witnesses demonstrated that they did not move to where they were transferred to school. (Tr. 372, 565, 632-36, 676-80, 714, 719, 841, 1216-17, 1334-35, 1358-60, 1385-86, 1664-65, 2587-88, 2699-2704, 3170-73).

The Court also observes that the absence of black schools in any of the defendant districts did not discourage black families from outside (or from within) Missouri from moving to and living in those districts. (Tr. 1153-54, 1213-14, and 1252-54).

Furthermore, plaintiffs have not persuaded the Court that any vestiges or significant effects of the pre-1954 dual school system remain in any of the SSDs. Similarly, the Court is not convinced that any one of the school district defendants was involved in any interdistrict violation that had a substantial segregative effect in the KCMSD as required by *Milliken*. On the contrary, the Court finds that each of the defendant suburban school districts disestablished its pre-1954 school system with deliberate speed and that all vestiges of that system have long since ceased to exist. Unlike *Bradley*, 338 F.Supp. at 167-176, there was not massive resistance to the *Brown* decision. Still, in that case, interdistrict relief was denied. 462 F.2d 1058, *aff'd* 412 U.S. 92. Specific findings regarding each district's desegregation efforts and unitary status are contained in individual sections *infra*.

II. Duty To Eliminate "Vestiges"

School District Association

It is plaintiffs' argument that the SSDs had a constitutional obligation to racially balance the metropolitan area —had an interdistrict vehicle, the Cooperating School Districts Association of Suburban Kansas City available— and failed to seize the opportunity. Plaintiffs also implied there was some racial motivation in the Association's actions. There is absolutely no evidence to justify plaintiffs' allegations.

The Association was formed in 1971 (Tr. 4819) with its primary purposes being to impact on state funding legislation and to save money through cooperative purchasing. (Tr. 4823). There is no evidence, however, that any school district member relinquished local control, joined with racial animus or promoted any program having a racial effect. The KCMSD was eligible to join. (Tr. 4824).

Cooperative efforts among school districts does not negate their autonomy. *Taylor* v. *Ouachita Parish School Board*, 648 F.2d 959, 965 (5th Cir. 1981); and *Lee*, 639 F.2d at 1256-57. And, as discussed *supra*, there is no *duty* on the part of any SSD to cooperate in the racial balancing of the metropolitan area.

The Sales Tax

Plaintiffs have pointed to the cooperation of the school districts with the City of Kansas City in regard to sales tax proceeds as evidence of interdistrict cooperation on subjects other than desegregation. How this sharing of revenues adds to plaintiffs' case is beyond the Court. There is no affirmative duty to refrain from racially neutral cooperative efforts—particularly one that inures to the benefit of the KCMSD's students. Plaintiffs intimated, but did not prove, that some of the SSDs were racially motivated in their concerns regarding the "strings" attached to the revenue. The Court finds otherwise.

The voters of Kansas City approved a ½% sales tax on August 16, 1974 with the revenues generated to be distributed proportionately to all school districts partially or wholly within the City of Kansas City. (P. Ex. 1763, 1767). That included the KCMSD and all SSDs with the exception of Blue Springs and Fort Osage. (P. Ex. 1767 and 1999). It also included three districts that are not

party defendants. (P. Ex. 1767). The sales tax was used to generate money because the KCMSD had not been able to pass a bond issue or tax levy since 1965. (P. Ex. 1763).

Each recipient school district entered into a Cooperative Agreement with the City of Kansas City. (*See, e.g.*, P. Ex. 1746). The City Council Resolution not to interfere with the administration of any school district in the distribution of funds (P. Ex. 1763, 1767), was not the result of racially motivated concerns by the primarily white SSDs; instead, the resolution was in response to a constitutional challenge of the sales tax. (The Missouri Constitution, Article III § 40(24) prohibits passage of special laws regulating the management of public schools. The Missouri Supreme Court has held this provision to apply to municipal legislation, *Mathison* v. *Public Water Supply District No. 2*, 401 S.W.2d 424 (Mo. 1966), thereby requiring the "no strings attached" disclaimer.)

In each of the years the revenues were distributed, the KCMSD received at least 59% of the total. That amounted to $12,612,339.00 while Hickman Mills, recipient of the second largest share, received only $2,645,521.00. (P. Ex. 1746, 1767, 1999).

The Court finds there was no discriminatory intent nor result by any defendant district. The sharing of sales tax revenues by school districts is simply not a constitutional violation. *Taylor* v. *Ouachita Parish School Board*, 648 F.2d 959 (5th Cir. 1981).

Juvenile Homes

Plaintiffs' evidence adduced the fact that there are juvenile court homes located in several of the SSDs which homes were once operated by the KCMSD. Plaintiffs also allege the children remained segregated by race until the early 1960's.

Even if the Court accepts plaintiffs' position as true, there is still no interdistrict violation rising to the level

required by *Milliken* to impose the remedy sought. It is the Jackson County Court, not the SSDs, that selected the sites for the schools. It is the Juvenile Court that commits children to the schools, not the KCMSD or any other district; and there is absolutely no showing that the schools have had a racial impact on the KCMSD or any SSD.

While the Court may agree that the county courts are state entities, that fact does not tend to establish a constitutional violation by any SSD.

Special Education

As further evidence of the fact that the SSDs are not autonomous, plaintiffs point to the interdistrict arrangements made for special education. Again, plaintiffs' position is that the school districts can and do cooperate in the provision of educational services but refuse to cooperate to desegregate the metropolitan area. Once again the Court concludes that interdistrict operation of specialized programs does not compromise the SSDs' autonomy nor evidence racial discrimination. While the districts had the legal capacity to allow or participate in interdistrict transfers, they had no legal obligation to do so.

As discussed in the sections regarding individual districts *infra*, the school districts contract among themselves to provide for the education of the handicapped and especially needy children living in their respective districts. Those contractual arrangements are done pursuant to state law which imposes a specific duty on the districts to provide a gratuitous education to all handicapped and severely handicapped children residing in their district. *See*, § 162.670 *et seq.*, R.S. Mo. The federal government promotes "free appropriate public education" for handicapped children by providing states with financial assistance. 20 U.S.C. § 1411 *et seq*. Because of the proportionately small number of handicapped children residing in each district, they must cooperate in the exchange

of students and services to meet their statutory obligations in an administratively efficient manner. The arrangements made, however, are not racially discriminatory nor do they abrogate the districts' autonomy.

The fact that interdistrict cooperation of this nature is possible may have relevance at a remedy stage, but it does not assist plaintiffs in proving interdistrict constitutional violations.

Vocational Education

Plaintiffs also alleged the establishment and operation of area vocational technical schools in the Kansas City area was purposefully designed to perpetuate racial segregation. Plaintiffs also point to the interdistrict cooperative nature of the vocational schools. A review of the evidence, however, leads the Court to conclude that the vocational educational system in the Kansas City area is not an interdistrict constitutional violation.

Beginning in 1965, the state of Missouri began distributing federal funds to local school districts desiring to provide vocational technical training for their students through the federal Area Vocational Technical School (AVTS) program. (P. Ex. 1552). Each district, in its discretion, determined whether or not to participate in the program and in what manner their participation would occur. (Drake Depo. at 130-131). Those individual decisions did not dilute the districts' autonomy.

In 1965, the KCMSD was the first district in the area to request it be designated as a "host" district to operate an AVTS facility. (Tr. 6359, Drake Depo. at 20). The KCMSD did not invite nor seek to associate with any other district in its AVTS; instead, it sought explicitly to serve only those students attending school in its district. At that time, it was a majority white school district with a student population of 50,000 including ten high schools which would operate as "sending" schools to the proposed

AVTS. (Tr. 6221, 6360-62; D. Ex. K2). The fact that other districts do not participate in KCMSD's AVTS is not a vestige of any prior dual school system.

The Fort Osage AVTS opened in 1968. Fort Osage, Blue Springs, Grain Valley and Oak Grove participate in the Fort Osage AVTS; the latter two districts are not parties to this litigation. (P. Ex. 1709, 1733, Gragg Depo. Vol. I at 90-91, Drake Depo. at 93). The KCMSD did not request that Fort Osage participate in its AVTS or even suggest such a possibility was available. (Bartow Depo. at 100, Gragg Depo. Vol. II at 93-94, 96). Fort Osage did not investigate participation with the KCMSD due to the long distance between the KCMSD and Fort Osage. (Bartow Depo. at 98, 108). The Court finds the establishment of the Fort Osage AVTS was not motivated by a desire to discriminate against minorities but was based instead on sound educational and organizational reasons. It is far removed from the KCMSD and would have been impractical for Fort Osage and Blue Springs to participate in the KCMSD AVTS.

In 1971, Raytown was approved for designation as an AVTS. (P. Ex. 1537). Six school districts, Center, Grandview, Hickman Mills, Independence, Lee's Summit and Raytown, with a total of eight high schools enrolled students at the Raytown AVTS. (P. Ex. 453). There is no evidence that KCMSD participated in the discussions about Raytown's AVTS formulation (probably because KCMSD had already sought and obtained designation as an area to maintain an AVTS). The Court finds the fact that KCMSD did not participate in these discussions was not related to race or an intent to discriminate. (Tr. 2057).

KCMSD's former acting superintendent, Dr. Fields, testified that he was involved in vocational education and he knew of no AVTS designation that was deliberately sought, designated or maintained to perpetuate segregation. (Tr. 2057). In fact, he testified that the various

AVTS's were established to foster administrative convenience and to prevent overlap. (Tr. 2057).

North Kansas City School District does not participate in any vocational educational technical program with another district or in an AVTS. (Doolin Depo. Vol. I at 47-48, Waier Depo. at 127-29). Park Hill participates in the Platte City AVTS and Platte City School District is not a party to this litigation. (P. Ex. 34). Liberty participates in the Excelsior Springs AVTS which is another school district not a party to this case. (P. Ex. 34).

Dr. Nystrand gave testimony that there were no sound administrative reasons for the current configuration of the AVTS's in the metropolitan area. He admitted, however, that some great distances existed between the KCMSD's AVTS and major towns in other districts that participate in outlying AVTS centers. (Tr. 6215). And, there are school districts geographically further removed from KCMSD currently not parties to the suit who participate with some defendants in an AVTS facility. (P. Ex. 1709, Gragg Depo. Vol. II at 43).

The only testimony which contended that the AVTS's were operated in a discriminatory manner came from Dr. Charles Benson. Dr. Benson, who the plaintiffs tendered as an expert in the financing of vocational education, did not claim to know of any racial discrimination but he alleged financial discrimination. Although Dr. Benson found fault with the way the state of Missouri vocational education funding formula impacted on the KCMSD, he admitted it had been approved by the federal government. (Tr. 6359). The Court notes in fact that Dr. Benson found fault with all 50 states' funding formulas for vocational education. (Tr. 6384). There is no evidence demonstrating that any defendant district was trying to contain any racial group within KCMSD by virtue of the use of funds obtained through the formula. Furthermore, the $115.38 per student that the KCMSD received from the federal

government in fiscal year 1982 was far more than any suburban defendant AVTS received. (Tr. 6373).

The Court finds that plaintiffs have not demonstrated a constitutional infirmity in the state's formula for distributing vocational educational monies under the standards of *San Antonio Independent School District* v. *Rodriquez,* 411 U.S. 1 (1973). There has been no evidence that vocational educational monies have been distributed with a purposefully discriminatory motive or effect.

Vocational education in the Kansas City metropolitan area is unitary and is not a vestige of any prior dual school system. The area schools were established without discriminatory intent and there was no credible evidence that their operation had the effect of segregating students on the basis of race. Unlike St. Louis, there is no separate "Special District" for vocational education drawn along racially segregative lines. See *Liddell* v. *Board of Education,* 491 F.Supp. 351, 353 (E.D. Mo. 1980), *aff'd,* 667 F.2d 643, 651 (8th Cir.) (Liddell III), *cert. denied,* 454 U.S. 1081, 1091 (1981). The Court finds that the operation of vocational education in the Kansas City metropolitan area is not an interdistrict constitutional violation. Nor do the districts' cooperative abilities in this regard support a finding of liability.

Merging Opportunities

Even if there were a duty on the SSDs to promote racial balance in the metropolitan area, plaintiffs' evidence fails to demonstrate an intent on the part of the SSDs to racially discriminnate in their various positions nor is there evidence, in many instances, that the measures raised had or would have had an integrative effect.

House Bill 171

House Bill 171 (P. Ex. 977) is an example of such a measure. It was passed by the Missouri General Assembly

and signed by the Governor in 1957. 1957 Mo. Laws 454. Prior to the enactment of H.B. 171, § 165.563 provided in part:

> Every city in this state now having or which may hereafter have *500,000* inhabitants or over, together with the territory now within its limits, or which may in the future be included by any change thereof, shall be and constitute a single school district. . . .

Mo. Rev. Stat. § 165.563 (1949) (emphasis added). H.B. 171 amended this section so that it would apply to Missouri cities having *700,000* or more inhabitants.

The legislative history demonstrates that H.B. 171 did not amend the population level prescribed by § 165.563 for the first time; the section's predecessor was enacted in 1897. Act of March 23, 1897, § 2, 1897 Mo.Laws 221 (1897). It provided that a city exceeding 300,000 persons shall constitute a single school district. That statute was then amended in 1909 to change the population level from 300,000 to 500,000 persons. Act of May 28, 1909, § 1, 1909 Mo.Laws 846 (1909). There is no evidence nor did plaintiffs argue that the Missouri General Assembly chose to establish the population level at 300,000 in 1897 for racial reasons or to amend it to 500,000 in 1909 for racial reasons.

There are additional reasons supporting the Court's finding that House Bill 171 was not discriminatorily enacted: First, Representative J. McKinley Neal, a black representative from a legislative district within the KCMSD (Tr. 4653), voted for H.B. 171. Representative Neal had long been active in promoting civil rights organizations such as the NAACP and the Urban League (Tr. 4653), and he introduced the legislation which led to the creation of the Missouri Commission for Human Rights in 1957. (Tr. 3130). Second, not one state representative or senator, black or white, cast a vote against H.B. 171. (SSD Ex. 4). Third, the Court finds that the state

of Missouri enacted H.B. 171 for the same reasons that it had prescribed a population level in 1897 and amended that figure in 1909. Its purpose was to avoid administrative confusion and problems resulting from annexations or population changes. Fourth, the KCMSD designed the amendments prescribed by H.B. 171 and supported the passage of the bill. (Tr. 4648, 6222). The Court finds that the KCMSD supported H.B. 171 because of bonding and operational problems that would result if the KCMSD automatically expanded and become coterminous with the City of Kansas City. (Travis Depo. at 93-100). Furthermore, the black enrollment in the KCMSD was stable during this period; in 1956, the student population was 22.3% black and in 1957 it was 22.8% black. (Tr. 2048). Finally, Representative Frank Mazzucca, whose district included part of the KCSMD (Tr. 4651-52), introduced H.B. 171 in the Missouri General Assembly. (SSD Ex. 4). His actions were not motivated by racial concerns.

The population of the City of Kansas City did not exceed 500,000 in the 1960 census. (Tr. 13,315-16). Therefore, H.B. 171, changing the population trigger to 700,000, did not affect the boundaries or racial composition of any defendant school district including the KCMSD. Furthermore, the Court notes that significant annexations in eastern and southern Jackson County and Clay County to the City of Kansas City occurred after H.B. 171 was enacted. (P. Ex. 425). There has been no showing by plaintiffs that the KCMSD's present racial composition would have been different had H.B. 171 not been passed.

The KCMSD annexed several all-white school districts following 1954, including Sugar Creek in 1955, Rock Creek in 1957, Pitcher-Fairview in 1958, and Pleasant Valley in 1973. (Tr. 1974, 6120; P. Ex. 407). The Court finds that based on this evidence that even after the *Brown* v. *Board of Education*, 347 U.S. 483 (1954),

decision, and after the enactment of H.B. 171, the KCMSD was annexing school districts and gaining white students through those annexations. The Court must therefore conclude that H.B. 171 was not enacted with the intent to concentrate black students within the KCMSD nor did it constitute an intentional interdistrict violation.

Spainhower and Related Proposals

Plaintiffs also point to the Spainhower Commission's report and other metropolitan proposals as evidence of racial animus and a derogation of the SSDs' duty to eliminate the vestiges (by promotion) of a dual school system.

The Spainhower School District Reorganization Commission report of 1979 contained multifaceted recommendations involving, for example, finance, boundaries, and various levels of local control. The Court finds that the General Assembly did not enact the recommendations of the Spainhower Commission because it desired to maintain Missouri's strong tradition of local control over public education. (Tr. 6095, 6967; Spainhower Depo. at 35-36, P. Ex. 497, 1728, 2172 and 2192). The statewide nature of the Commission's recommendations would have substantially reduced local control.

There was no credible evidence on which the plaintiffs may rely to attempt to support their allegation that racial concerns led to the defeat of the Spainhower recommendations. Dr. Nystrand testified that the defeat of the Spainhower recommendations resulted from a desire to maintain local control and from racial concerns. (Tr. 6095). While there has been considerable evidence to support the Doctor's conclusion regarding local control, the plaintiffs did not present facts to support the conclusion that racial opposition caused the recommendation's defeat. Allegations that some legislators may have made private comments about race, (Spainhower Depo. at 30), even if accepted as true, were not a significant factor contributing to the recommendation's demise. (Spainhower Depo. at

30-37). Nor is plaintiffs' position bolstered by evidence that private individuals opposed the Spainhower recommendations. The vast majority of opposition by private individuals was motivated by concerns that the patrons' sense of participation would be negated and that local control would be diminished. These concerns were altogether unrelated to race. (Tr. 6967, P. Ex. 497). Moreover, private racially-motivated opposition is factually irrelevant. No defendant or governmental entity adopted these purported racial motivations or was prompted to act or to refrain from acting because of them. Nor does private opposition constitute "state action" under the Fourteenth Amendment; therefore such opposition is also legally irrelevant. *See, United Brotherhood of Carpenters, Local 10* v. *Scott,* 103 S.Ct. 3352, 3357 (1983).

The plaintiffs have offered evidence that various school district defendants expressed opposition to the Spainhower recommendations. The evidence shows that the defendant districts which opposed the recommendations opposed them because they desired to maintain the control and authority over educational matters exerted by the local boards of education. (P. Ex. 1728). Also, the districts had great pride and a sense of community in the school districts which they had built. The recommendations proposed to destroy or alter those districts in a fundamental fashion. (Spainhower Depo. at 35). There were simply myriad reasons for opposition to these recommendations that had no discriminatory basis.

Additionally, the variety of proposals to restructure school districts in the metropolitan area drew both support and opposition. Some of those proposals, such as Dr. Hazlett's article in "Conceptions for Changing Times," suggested a metropolitan school district which did not include all of these defendant districts.

The "Milwaukee Plan" which essentially pays incentives for black students to attend school in other districts

also failed in the state legislature. The Missouri Department of Education concluded that the bill as introduced was too expensive for the state.

There is no evidence that any of the SSDs rejected or declined to consider these proposals for reasons at all related to race. Plaintiffs failed to adduce any evidence of racial intent by any of these suburban school district defendants. *Cf. Bradley v. School Board,* 338 F.Supp. at 158 (opposition to merger suggestions) *rev*'d, 462 F.2d 1058, (4th Cir. 1972), *aff'd mem.*, 412 U.S. 12 (1973). And absent a duty to merge, arguing failure to do so is legally irrelevant.

Employment Practices

In an intradistrict setting, courts often consider faculty composition as one indicator of a segregated school system. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971). Plaintiffs argue in this interdistrict context, however, that faculty imbalance between the SSDs and the KCMSD is a vestige of the prior dual school system and that the lack of black teachers in the suburbs discourages blacks from moving to these areas and thereby affects the racial composition of the student body. The Court rejects plaintiffs' arguments for two reasons: first, the evidence does not support plaintiffs' conclusions that there has been discriminatory hiring by the SSDs; and second, there is no credible evidence that a link exists between faculty composition and student body composition.

Because this is not a Title VII employment discrimination suit of an intradistrict nature, plaintiffs had to draw a link between employment practices by the SSDs and the racial composition of its student body thereby implying an interdistrict effect. Plaintiffs' evidence, however, fails to provide that link.

Plaintiffs rely primarily on the testimony of their statistician, Dr. Robert Carlson. Essentially, Dr. Carlson's

analysis shows that between 1973 and 1980, ten percent of the teachers available for hire in the metropolitan area were black yet few of the SSDs hired that percentage of minority teachers. The conclusion drawn is that employment decisions (and ensuing racial composition of the faculty) was not a chance occurrence. (Tr. 6448, 6529). While the analysis may eliminate chance as a reason for the number of black hires, it does not provide a basis for plaintiffs' further conclusion that racial animus motivated the districts' employment decisions and that in turn led to an imbalanced student body.

For the following reasons, the Court finds Dr. Carlson's methodology unsound and his conclusions therefrom unpersuasive: first, the analysis *assumes* each district received 10% minority applications; there was *no* evidence of the actual number of applications submitted to each defendant district from which faculty was hired. (Tr. 6506). Second, the analysis did not consider if black applicants turned down job offers (Tr. 6515) or whether there was a personal preference by black teachers to teach children of a particular race. (Tr. 6483). Instead, Dr. Carlson assumed all black applicants would be willing to work in the SSDs. (Tr. 6502). Third, Dr. Carlson did not consider if the KCMSD, or another district, such as Kanasas City, Kansas was hiring an inordinately large number of black teachers from the available labor pool, and if so why. (Tr. 6503-04, P. Ex. 721F, Table C). Nor did Dr. Carlson consider disparities in starting salaries among the defendant districts and the KCMSD. (Tr. 6475). Fourth, in determining the number of expected black hires, Dr. Carlson considered both full-time and part-time teachers. In calculating the number of blacks actually hired, Dr. Carlson only used full-time teachers and disregarded part-timers. (Tr. 6473-74) Fifth, Dr. Carlson did not consider the labor pool members' qualifications to teach particular subjects nor match those qualifications to the needs of each defendant district. Dr. Carlson did not compare the needs of each district, did not compare the curriculum of each district, and did

not consider whether the labor pool members were certified to teach in Missouri or Kansas. (Tr. 6469-6476). In fact, Dr. Carlson's opinion was based upon the unproven assumption that black and white teacher applicants had equal training, qualifications, and experience. (Tr. 6485).

Plaintiffs' conclusion that black faculty would attract more blacks to the suburbs was supported primarily by the opinion of Dr. Orfield. His opinion, however, was not based on any reliable study or analysis actually done. (Tr. 15,304, 15,415). In fact, the study upon which Dr. Orfield purportedly relied merely referred to "some" black teachers or staff being present in the district. (Tr. 15,299). And, gauged by that standard, every suburban district qualifies. Moreover, the Court notes that plaintiffs' witness, Dr. Fields, contradicted Dr. Orfield's opinion by concluding that more black teachers in the SSDs would make little if any difference in the number of black students in the districts. (Tr. 2115).

Raytown and Grandview each have more black students than North Kansas City School District, although North Kansas City School District has appreciably more black teachers than either of those districts. (P. Ex. 2967). The evidence in this case, therefore, refutes plaintiffs' conclusions.

The Court finds it would be speculative to conclude there would be more black students residing in the defendant districts if those districts had more black teachers and staff. In any event, plaintiffs have no constitutional right to attend school in a school district with a teaching staff of any particular racial composition. *Oliver* v. *Kalamazoo Board of Education*, 706 F.2d 757, 762 (6th Cir. 1983). As the Sixth Circuit declared, "[A]ll that the students are entitled to is the 'sustained good faith effort to recruit minority faculty members so as to remedy the effects of any past discriminatory practice.' (citations

omitted)." *Id.* at 762 (footnote omitted). The Court notes that the school district in *Oliver* had already been found guilty of discriminatory hiring practices. Certainly, a student's rights in districts not found guilty of constitutional violations (like here) would not be greater.

III. Effects

A portion of plaintiffs' "effect" theory suggests that the SSDs may be included in an interdistrict remedy even absent any finding that they have committed specific constitutional violations. Plaintiffs had to resort to arguing "effect" because they presented no evidence that any of the SSDs acted to cause segregation.

One aspect of this theory, white flight, does not implicate any SSD and must be rejected. There is no evidence that any school official of the SSDs acted to lure white families or to discourage black families from moving into their districts. In fact, the Court finds that none of the factual evidence concerning housing implicated any of the school district defendants. Several of plaintiffs' witnesses, Edward Fields, Lucille Bluford and Cleo Miller, testified to having had substantial contact with the SSDs yet none of these witnesses knew of any action by the SSDs which lured white families into those districts. (Tr. 2116, 3127 and 6964).

In fact, as indicated at the outset, none of plaintiffs' witnesses, expert or otherwise, could attribute any change in the housing market to an action by any SSD. A review of some of that testimony confirms this fact.

Plaintiffs called Dr. Gary Orfield as an expert in both school and housing areas. The Court finds that Dr. Orfield's testimony concerning racial transition within the KCMSD has only intradistrict implications. There was nothing in Dr. Orfield's testimony that would constitute credible evidence that any SSD caused or contributed to cause white flight from the KCMSD. (P. Ex. 1778A-G

demonstrates no significant white flight effects in any of the suburban districts). Moreover, Dr. Orfield noted that no ethnic group is racially balanced residentially and no one in this field of study apparently advocates a random dispersal of ethnic groups. (Tr. 15,410).

The Court also finds that many of the moves of blacks into the suburbs are accounted for by the desire to live in middle class situations and not necessarily a desire to live in an integrated situation. (Tr. 15,408-10).

Plaintiffs also called Dr. John Kain in connection with their housing case. The import of the Kain analysis was an attempt to portray what the population distribution would be in the Kansas City metropolitan area if all residential location decisions had been made solely on the basis of three factors, family income, family structure, and the presence of children. Dr. Kain attempted to discount the significance of other factors which influence a family's decision on where to live. (Tr. 7473-76). Dr. Kain's decision to use only three variables in his analysis was assertedly based on his knowledge of research in the field of the factors influencing residential choice. (Tr. 7489). Dr. Kain readily admitted, however, throughout his testimony that many other factors bear on a family's decision of where to reside.

Even accepting Dr. Kain's conclusion that the present racial segregation is due to discrimination, Dr. Kain offered no evidence or opinions tending to show that any actions or inactions of any SSD contributed in any significant way to causing the racial residential separation he described. The Court finds that none of the SSDs did or failed to do anything which had any significant effect on residential patterns in the Kansas City SMSA. His testimony, therefore, does not support plaintiffs' claims for relief against the SSDs.

Another of plaintiffs' expert witnesses was Yale Rabin, a professor of architecture and urban planning at the University of Virginia. (P. Ex. 2871). Although the

thrust of Mr. Rabin's testimony was that blacks have been confined within the KCMSD, absolutely no credible evidence pointed to actions by any of the SSDs causing this condition to exist. The Court finds that blacks are not constrained within the KCMSD by any action of the SSDs. Indeed, as discussed *infra*, P. Ex. 53G and other evidence shows that the black enrollments in each of the defendant school districts have increased fairly steadily since 1968. In 1980, 23,434 blacks resided outside of what Mr. Rabin called the "principal contiguous area" on P. Ex. 12A. (Tr. 11,071-72). This was an increase from 1970 of 14,645 blacks. (Tr. 11,074). Mr. Rabin made no attempt to develop the data at the school district level (Tr 11,080-81), although he could have done so through Dr. Kain's method (P. Ex. 1265H), or roughly by use of township level data. (Tr. 11,083). In any event, the Court finds that this fact refutes Mr. Rabin's barrier theory to black movement. The Court finds that nothing in Mr. Rabin's testimony tended to establish any facts for which there would be any liability on the part of any SSD.

In regard to Mr. Rabin's testimony concerning relocation matters, the Court finds that the relocations had no significant effect on the racial composition of the enrollment in any SSD. The Court also finds that any racial discrimination resulting from the placement of highways and urban renewal projects are matters with which no school district had any influence, input or control.

Another of plaintiffs' housing experts was Professor Gary Tobin. The Court has considered carefully Dr. Tobin's presentation, and finds that none of the SSDs were shown by Dr. Tobin to have had any significant involvement in housing matters, or any control whatsoever over the private decisions people make as to where to live. The Court also finds that none of Dr. Tobin's opinions demonstrated any significant effect on the racial makeup of any of the SSDs. Dr. Tobin described the growth of the white population in suburban areas between

1950 and 1970, although he, like Professor Rabin, made no attempt to study the growth in any individual school district. He stated that the white population grew by over 224,000 while the population in the City of Kansas City (which includes many areas covered by the SSDs) declined by 72,000. (Tr. 12,982-83, 13,313-15 and P. Ex. 16G). He made no analysis as to the cause of that demographic shift, and there is no evidence that any of the SSDs took any action to lure whites out of the city. The SSDs had no involvement in or influence on the manner in which blacks or whites made residential decisions. Actions of the KCMSD in assigning children to particular schools may have had an intradistrict effect but those actions were not influenced by any SSD. Nor did those actions have any significant effect on the enrollment of any other SSD.

Part of plaintiffs' evidence of white flight to the suburbs consists of charts displaying the transfer of student records from various KCMSD high schools to surrounding districts over a 15-year period from 1958 to 1973. (P. Ex. 1775B, C, D, E). The following totals reflect the number of records transferred to each SSD and the percentage of total student enrollment that number represents:

SCHOOL DISTRICT	Total Number Transferred	Percentage of KCMSD Enrollment	Percentage of SSD Enrollment
Blue Springs	24	.04	.5
Center	225	.3	4.1
Ft. Osage	9	.01	.2
Grandview	82	.1	1.2
Hickman Mills	350	.5	2.5
Independence	121	.2	.8
Lee's Summit	66	.1	1.1
Liberty	9	.01	.2
North Kansas City	120	.2	.5
Park Hill	25	.04	.4
Raytown	346	.5	2.3

(P. Ex. 1775B, C, D, E, 53G).

Even assuming all students were white (the records contained no race designations) and further assuming they all moved to the SSDs because of racial transition in the KCMSD schools, plaintiffs' argument still fails. First, there is no evidence that the SSDs enticed these families to move to their districts. And second, regardless of the impetus behind the moves, the numbers involved are too insignificant to have had a segregative impact on the KCMSD or the SSD. White flight is simply not a constitutional violation by any SSD.

In describing the Southeast Corridor, (the direction of extension of the black population from its core), Dr. Tobin stated that by 1980 it had extended into the Raytown, Hickman Mills, Center and Grandview School Districts. (Tr. 12,978-79). Thus, the Court finds that school district boundaries have not constrained black movement in any way. (Tr. 13,367).

Dr. Tobin also testified extensively regarding racially restrictive covenants that were utilized and enforced until 1948. (Tr. 13,005, 13,012-14). There was no evidence such covenants were enforced by the state courts following *Shelley* v. *Kraemer*, 334 U.S. 1 (1948). Nor was there any evidence that any SSD was involved in the placement or enforcement of any racially restrictive covenant. (Tr. 13,359). Additionally, tremendous housing growth in many suburban areas occurred after 1948 when such covenants were a nullity. The fact that blacks presently live in locations previously covered by restrictive covenants further undermines their significance.

Dr. Tobin also testified regarding FHA practices and their effect on the housing industry. (Tr. 13,081). These practices, however, are totally beyond the control of any particular school district. No connection was made between actions by FHA or other government officials and any SSD official.

Dr. Tobin's other area of analysis concerned the location of public and subsidized housing. He made no

analysis, however, of the number of public and subsidized units compared to the total number of units in each suburban district, (Tr. 13,348), or compared to the total population in each district. (Tr. 13,349). Thus, there is no precise way to determine whether the KCMSD has a disproportionate share.

Plaintiffs' Ex. 27 purports to list all public and subsidized housing, and it shows that such housing is available in significant amounts in every defendant school district. The HUD § 8 program is also available in all parts of the metropolitan area. Although Dr. Tobin at first disputed the observations of former HUD director Southerland that there were thousands of lower income units in suburban areas (Tr. 13,350), he later agreed with that fact. (Tr. 13,429-30). Essentially, Dr. Tobin argued that there would be even more blacks living in low cost housing in suburban areas if there were more affirmative marketing and counseling. (Tr. 13,239-40). Nevertheless, these matters are totally beyond the control of any school district. Furthermore, such an opinion overlooks Parvin Estates, a § 236 subsidized project in the NKC district, where Mrs. Ruth Schecter, one of the project's organizers, engaged in extensive marketing efforts with little success. (Tr. 12,542-43, 12,581-82, 12,584). Despite the affirmative marketing efforts advocated by Dr. Tobin, Parvin Estates has only been able to attract a 7 to 12% minority. Dr. Tobin had not considered those matters in giving his opinions. (Tr. 13,273-74).

Mrs. Schecter stated her expert opinion that a dual housing market existed and that to some extent it continues. (Tr. 12,339). The programs and practices she described, however, involved private real estate brokers (Tr. 12,339-40), and speculators (Tr. 12,377). She also blamed various HUD programs such as FHA (Tr. 12,369, 12,376), § 235 (Tr. 12,371) and subsidized housing (Tr. 12,382, 12,386), as well as highways and urban renewal; none of her opinions were based on actions by any particular SSD.

Another expert witness on the housing matter was journalist Charles Hammer. Most of Mr. Hammer's testimony concerned actions within the KCMSD; he did not identify any SSD as having any connection whatsoever with racial turnover in southeast Kansas City neighborhoods. He attributed fault to real estate brokers (Tr. 12,008), urban renewal, highways, and FHA. (Tr. 12,025, 12,040 and 12,044-45).

To the extent, if any, that the racial composition of the KCSMD is the result of steering and blockbusting practices by private real estate agents, both black and white, (Tr. 1930-33, 3103-04), the Court finds that these actions of private individual real estate agents are not actions of the KCSMD or of any SSD, and are beyond the control of any school district. (Tr. 1927-28). The Court finds that the SSDs played no role in initiating, sanctioning, or perpetuating blockbusting, steering or red lining activities. (Tr. 1927-31, 1935). Ms. Lucille Bluford, the editor of the black newspaper, *Kansas City Call,* noted that the transition of neighborhoods from white to black and accompanying white flight had existed in Kansas City since the 1940's (Tr. 3001, 3004) yet there was no testimony that linked the SSDs with this process. The Court finds that people moved for a variety of reasons, including a desire to be with people of like religious and racial characteristics. (Tr. 2034-35). There was no testimony that the SSDs contributed to those private preferences and decisions. (Tr. 3125).

A substantial number of black families have moved into the SSDs during and after the 1960's. (Tr. 439, 667, 1559-60, 1702-03, 1724, 2062, 2103, 2351, 3125-26, 4869-71, 6810, 7095 and 7097). Many of these black families moved into those districts from locations inside the KCMSD. (Tr. 439, 6810, 6968).

With the exception of Liberty, the percentage of black students in each of the SSDs has increased since 1968 and, as the following chart displays, the increase has sometimes been dramatic:

SCHOOL DISTRICT	Percentage of Black Students 1968	Percentage of Black Students 1982	Percentage of Student Enrollment 1968	Percentage of Student Enrollment 1982
Blue Springs	0	162	0	1.9
Center	3	327	.1	10.6
Ft. Osage	2	25	0	.4
Grandview	32	494	.6	9.8
Hickman Mills	29	1,497	.2	16.7
Independence	141	140	.9	1.2
Lee's Summit	1	N/A	0	N/A
Liberty	124	101	3.4	2.7
North Kansas City	0	153	0	1.0
Park Hill	23	N/A	.4	N/A
Raytown	0	673	0	7.6

(P. Ex. 53G).

Although the percentage of black students in Liberty declined slightly from 1968 to 1982, that decline cannot be attributed to massive white flight to Liberty. In fact the raw numbers show that Liberty only had 28 more white students in 1982 than it did in 1968, an increase of only .79% over fourteen years. (P. Ex. 53G).

Based on the evidence presented, the Court is compelled to find that no SSD in any significant way influenced the housing patterns in the Kansas City metropolitan area. And, as discussed *supra*, the Court rejects plaintiffs' "effects" theory that liability may be placed upon the SSDs for being the recipients of people moving for whatever reason. Absent a nexus between conduct of the defendant SSDs and the housing actors, the Court will not find the SSDs liable for racial imbalance that may be attributed to policies or practices of independent housing actors. *Bell* v. *Board of Education*, 683 F.2d 963 (6th Cir. 1982).

FINDINGS APPLICABLE TO INDIVIDUAL DISTRICTS

Blue Springs

No evidence of racial motivation was presented regarding the formation of the district which, by popular vote of eleven rural districts in 1949, became the Blue Springs Reorganized School District No. 4. (P. Ex. 255, 525).

Plaintiffs have adduced no evidence that the boundaries of the defendant district were discriminatorily drawn. The Board of Education did pass a resolution dated July 25, 1975 that opposed any measure that would change, divide or enlarge its existing boundaries. (P. Ex. 2125). Although KCMSD is mentioned in the resolution, the Court finds this was only a vote for local control; there is no evidence of discriminatory purpose or impact. In any event, the resolution had no effect; the people could have ignored it and petitioned and voted for a change in boundaries.

There were some black families living in the small rural districts which were later reorganized to form the defendant district. All were farmers (Tr. 883, 914, 935, 951-52, 964, 5308), and the closest school for blacks was the Young School in Independence. The enumeration data shows only five black children located in the small rural districts between 1911 and 1943. Even assuming these children were transferred to Independence or Kansas City for school, the Court finds there is insufficient evidence that the transfers had other than a *de minimis* impact on any other school district. All the black families were gone by 1943.

In 1971, the Blue Springs District joined the Cooperating School Districts Association of Suburban Kansas City to increase buying power, influence legislation, and share new education ideas (P. Ex. 1700, Bartow Depo. Vol. II at 46). The Court concludes that Blue Springs' partici-

pation in this organization did not discriminate against the KCMSD or its students.

Blue Springs participates in the Ft. Osage AVTS as do the Grain Valley and Oak Grove Districts (not defendants herein). (P. Ex. 34 and 1709). The Court finds no racially discriminatory intent accompanied the founding of the Ft. Osage AVTS nor Blue Springs' participation therein. (*See also* individual section regarding Ft. Osage, *infra*).

The only other interdistrict student involvement relating to Blue Springs is the operation of a Blind-Deaf Center that educates children from both Blue Springs and other districts. (P. Ex. 1720). Non-resident transfers to the Center are accepted on a space-available basis. (P. Ex. 1720). There is no evidence of any discriminatory intent nor effect on any of the defendant districts by the operation or participation in the Blind-Deaf Center.

Such matters as the ½% sales tax and House Bill 171 are irrelevant to Blue Springs because the district is not within the city limits of Kansas City. (Tr. 6204, P. Ex. 1767 and 1999). Nor is it contiguous to the KCMSD. (P. Ex. 37).

While there are few black faculty or staff employed in the defendant district, there is no evidence that the teachers are hired on other than their qualifications. (P. Ex. 982 and 2967). As more fully set forth in the general findings *supra,* interdistrict employment discrimination, even if found to exist, has little if any bearing on the racial composition of defendant districts and therefore has little relevance to this litigation.

There is no evidence that the Blue Springs School District acted to prevent blacks from obtaining housing in the district with an intent to discriminate. Even if Dr. Tobin's map depicting restrictive covenants in Blue Springs is found to be accurate, (P. Ex. 22), they had no effect because most of the residential development in the area

occurred after the Supreme Court's decision in *Shelley* v. *Kraemer,* 334 U.S. 1 (1948).

Having failed to establish any intentional racially discriminatory act or omission by these defendants which has had a substantial segregative impact in any other school district, the Court will sustain the Rule 41(b) motion filed by Blue Springs and its superintendent.

Center

The present Center School District consists of territory formerly occupied by the Center, Dallas and Boone districts. Dallas and Boone were grade school districts and sent their high school students to Center when space was available. (Lehman Depo. at 16). The present boundaries and the annexations that occurred were not racially motivated. (*See,* e.g., P. Ex. 405). The district is situated south and is continguous to the KCMSD. (P. Ex. 37). Center did support passage of Senate Bill 29 in 1963 which changed the law so that annexation elections would be more difficult to call but their position was prompted by the fact that eight elections had been called from the late 1940's until the early 1960's to annex Center to the KCMSD. Each election, held at the district's expense, had failed by a large margin. (Bondurant Depo. at 13, 74, 49). The Court finds the position taken by Center was not racially motivated and had no segregative effect.

There is no evidence that Center had any black residents at any time prior to 1954. (Lehman Depo. at 83). The records do show the following number of high school students residing in areas now encompassed by Center attended the KCMSD for the years indicated: 1949-50, 37; 1950-51, 38; 1951-52, 39; 1952-53, 42; 1953-54, 77; 1954-55, 116. (P. Ex. 1770). Even if the Court were to assume all these children were black, they are of insufficient number for the Court to conclude they had a substantial segregative effect on either district. The Court therefore determines that for space reasons or other rea-

sons not apparent from the evidence, some Center students attended the KCMSD; none of the transfers, however, were racially motivated. (Lehman Depo. at 29). There is no evidence that Center at any time failed to permit black children residing in the district to attend its schools, treated black children attending Center schools differently because of race, assigned students on other than a racially neutral basis, denied admission to any black student on the basis of race, or in any other way conducted itself in a racially discriminatory manner. Center never operated a dual school system and, therefore, no vestiges remain to dismantle.

Over the past decade, Center's minority population has grown significantly. Presently, over 12% of the student population is black. (P. Exs. 53G, 983, and 2967). This growth substantiates the Court's findings there are no unconstitutional barriers to black residents or students in the Center District.

As explained in the general findings, the Cooperating School Districts Association of Suburban Kansas City, of which Center is a member, was not formed and does not operate with a racially discriminatory purpose. (Tr. at 4832). The organization has had no racially segregative effect in any district.

Because the district is presently located within the Kansas City city limits, (P. Ex. 425), it chose to support and share in the ½% city tax. (P. Ex. 2177). As discussed regarding all districts *supra*, Center's cooperation with the City in this manner was in no way racially motivated.

Because of a lack of facilities in the district, Center sends its handicapped and other special education students outside the district, often to the KCMSD. (Lehman Depo. at 61). These transfers are made for sound educational reasons, are racially neutral, and are insignificant in number.

Center participates in the Herndon AVTS located in the Raytown School District. There is no evidence that

Center refused to participate in the KCMSD's vocational technical school or that the KCMSD ever offered the opportunity to participate.

Support of H.B. 171 and opposition to the Spainhower plan were for reasons of local autonomy. (Lehman Depo. at 77-79). There is no evidence whatsover that Center's position on either issue was racially motivated.

Center employed its first black teachers in 1978. (P. Ex. 984). There is no evidence that Center has ever discriminated against any applicant for employment on the basis of race. Nor is there any evidence that any black applicant for employment in Center has ever been refused employment. The only evidence regarding Center's employment practices are the statistics from plaintiff's statistician, Dr. Roger Carlson. And, as discussed at length *supra*, his statistics and opinions are based on the availability of teachers in the entire SMSA rather than on the number of applicants to each defendant district. The Court therefore finds his opinions unpersuasive. Further, as more fully explained in the general order, there is insufficient evidence that the racial makeup of Center's staff has in any way influenced housing choices of either race. The Court finds that Center's hiring practices have had no effect whatsoever on the racial composition of the student body of Center or that of the KCMSD.

In regard to housing, the Court finds there is no credible evidence that Center School District took any action or position which prevented any black family from moving to the district. Nor is there any credible evidence that Center took any action or postion which enticed or lured any white family from the KCMSD to Center. The map prepared by Dr. Tobin, plaintiffs' expert, (P. Ex. 22), shows that there were racially restrictive covenants in the Center School District, but there is no evidence which tends to prove that Center had any complicity in the placement or enforcement of those covenants nor is there any evidence that any black family failed to move to Center because

of those covenants. The continued increase in the number of blacks enrolled in Center (*see, e.g.*, P. Ex. 53G, and 983), is convincing evidence that there is no barrier to blacks moving to the Center District nor is there any present effect of any past practices which may have had a discouraging effect on black moves.

Having failed to establish any intentional racially discriminatory act or omission by these defendants which has had a substantial segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by Center and its superintendent.

Fort Osage

The Ft. Osage Reorganized School District R-1 was created in 1949 by a popular vote of the people residing in the area. (P. Ex. 538). The proposed reorganized district included the former Buckner and Levasy High School Districts and sixteen other rural districts. In 1951, three more rural school districts annexed to Ft. Osage, (Gragg Depo. Ex. F032), and in 1972, the Courtney School District voted to annex to Ft. Osage. (Gragg Depo. at 61-62). The Court finds the reorganization and annexations were not racially motivated. Ft. Osage is not contiguous to the KCMSD. (P. Ex. 37).

There was some evidence that a small number of black families lived around Sibley, now part of the Ft. Osage district, well before 1954. There is no evidence that Ft. Osage or any of its predecessor districts educated its black students in separate schools. Instead, the predecessor districts transferred those two or three black students to the KCMSD. (Tr. 5960). These few transfers did not have any segregative effect on any district. If any blacks left Ft. Osage or its predecessor districts, or failed to move to such areas from 1910 to 1954 because no black school was maintained, plaintiffs have failed to prove their numbers were other than *de minimis*. (Tr. 5960).

By 1954 there were no blacks living in the Ft. Osage School District. In 1968, two blacks had enrolled in the school district; by 1982, there were 25 blacks enrolled. (P. Ex. 53G). All students, regardless of race, attended the one high school located in the district. (P. Ex. 2967). There is no evidence of discrimination against any blacks attending the Ft. Osage schools. (Gragg Depo. 220-222).

At one time, Ft. Osage's orthopedically handicapped students attended the Delano School in the KCMSD because Ft. Osage had too few students with such handicaps to provide adequate teaching facilities within the district. (Gragg Depo. at 134-35). Presently, these children attend school at the Independence Comprehensive Special Education Program, (Gragg Depo. at 136), which is much closer than the Delano School. Ft. Osage's blind students attend the Blind-Deaf Center in Blue Springs school rather than the Troost School in the KCMSD, again because it is considerably closer to the students' homes. (Gragg Depo. at 137). The Court finds that these educational transfers did not have any effect on the racial composition of Ft. Osage or any other school district. Nor are they racially motivated or administered.

The Ft. Osage AVTS opened in 1968 accepting students from the Ft. Osage, Blue Springs, Grain Valley and Oak Grove School Districts. (Bartow Depo. at 94). The Grain Valley and Oak Grove districts are not parties to this case and none of the participants is contiguous to KCMSD. (P. Ex. 1709, Gragg Depo. Vol. 2 at 43). Ft. Osage decided to build the AVTS within its district because it had unused bonding capacity. (Bartow Depo. at 101). As discussed in the general findings, Ft. Osage did not join with the KCMSD AVTS because it was too far away. (Tr. 6215). No school district other than those currently participating in the Ft. Osage AVTS, including the KCMSD, ever asked to participate in the Ft. Osage AVTS. (Bartow Depo. at 100, Gragg Depo. at 93-94 and Vol. II 2 at 96). The Court finds that the formation and operation of the Ft. Osage AVTS does not constitute

a violation much less a significant interdistrict violation. Nor does state funding of the Ft. Osage AVTS unfairly impact on the funding of the KCSMD AVTS. (Tr. 6407-08).

Notwithstanding its affirmative action policy statement, the district has yet to employ a black teacher or staff person. (P. Ex. 2967). In recent years, Ft. Osage has entered into written contracts with black teaching candidates but, on each occasion, the candidates have decided to pursue other alternatives. (P. Ex. 2967 and Gragg Depo. at 225). Plaintiffs' evidence of employment practices, based entirely upon Dr. Carlson's analyses, did not consider this fact. (Tr. 6514). Moreover, as set forth more fully in the general findings, there is simply no credible evidence that the presence of more black teachers or administrators in Ft. Osage would have had any significant impact upon the racial composition of the students enrolled there.

Plaintiffs did not present proof that the Ft. Osage School District acted to prevent blacks from obtaining housing in the district nor in any way encouraged whites to do so. The map of restrictive covenants prepared by plaintiffs' expert, Dr. Tobin, located no such covenants in the Ft. Osage School District. (P. Ex. 22). There is no evidence that Ft. Osage ever opposed subsidized or other low cost housing of any kind in its district, and the Court finds such public and subsidized housing presently exists. (P. Ex. 27). The district's only involvement in zoning plans was its opposition to a planned liquor store near the Ft. Osage High School, (Gragg Depo. at 54-56, 58), and was not racially motivated.

The Court finds that Ft. Osage did not take a position on the Spainhower report. (Bartow Depo. at 152). Additionally, because none of the Ft. Osage School District lies within the limits of the city of Kansas City, House Bill 171 and the ½% sales tax have no relevance to this defendant.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by the Ft. Osage School District and its Superintendent.

Grandview

Plaintiffs' expert, Dr. James Anderson, established that no black persons resided in Grandview prior to 1954. (Tr. 5959, P. Ex. 37A). Therefore, Grandview never transferred any black students to the KCMSD. The Court finds that Grandview has never operated a dual school system and accordingly there are no vestiges to dismantle. The district is situated to the south but not contiguous to the KCMSD. (P. Ex. 37).

Currently the school district has a black enrollment of 10.1%. (P. Ex. 2967). Plaintiffs' expert, Dr. John Kain, predicted virtually the same proportion of black students would be expected in the school district in the absence of alleged discrimination (Tr. 8066). These figures confirm that, contrary to plaintiffs' arguments, there are no barriers preventing blacks and other minorities from moving to Grandview. All students, regardless of their race, meeting the established and racially-neutral residency requirements of the Grandview School District, have always attended school in that district.

Over the years, handicapped children or other students with special educational needs have attended special schools in other districts, mainly the KCMSD, (Strode Depo. at 23, Staires Depo. at 27-28 and Harrison Depo. at 91), because Grandview did not have adequate facilities to provide for them (Strode Depo. at 35). These transfers were for the sole purpose of accommodating the needs of its handicapped students (Staires Depo. at 27 and Strode Depo. at 23); there is no evidence of racial discrimination.

Grandview participates in the Herndon AVTS located in the Raytown School District. Grandview's participation in Herndon was administratively reasonable and proper and was not racially motivated: Herndon is located much closer to Grandview High School than is the KCMSD vocational education facility. Grandview is adjacent to the Raytown School District, but does not border on the KCMSD. Further, there was no evidence to show that the KCMSD invited or suggested to Grandview that it participate in the KCMSD's existing vocational program.

Grandview's opposition to the Spainhower recommendations was not related to race or any alleged potential for consolidation with the KCMSD (Strode Depo. at 16, Staires Depo. at 46 and Harrison Depo. at 115). Grandview opposed some of the Spainhower recommendations because it believed them to threaten local board autonomy (Staires Depo. at 46, Strode Depo. at 75 and P. Ex. 3240).

The only evidence offered by the plaintiffs to support their allegation that Grandview discriminated in hiring came from the plaintiffs' expert witness, Dr. Roger Carlson. In addition to the other flaws in his analysis, Dr. Carlson's data was inaccurate as applied to Grandview. For example, Dr. Carlson reported that Grandview hired three black teachers between 1973 and 1980 (P. Ex. 721F, Table G), yet plaintiffs' other evidence shows that Grandview hired five black teachers during that period. (P. Ex. 988 and 2967, Harrison Depo. at 76). Notwithstanding the variation, the racial composition of the faculty and staff of Grandview has not affected the racial composition of the students attending Grandview. (See general findings *supra*).

Plaintiffs did not present proof that the Grandview School District acted to prevent blacks from obtaining housing in the district with an intent to discriminate. The map of restrictive covenants prepared by plaintiffs'

expert, Dr. Tobin, located very few such covenants in Grandview. (P. Ex. 22). Moreover, the Court notes most of the residential development in Grandview occurred after the Supreme Court, in *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), eliminated the effect of such covenants.

There is no evidence that Grandview did anything to lure white students or to discourage black students from moving to Grandview. The school district studied residential development to assist in enrollment projections and was interested in housing and zoning matters because of their effect on the tax base. The district opposed the development of trailer parks because they are assessed as personalty for tax purposes. There is no evidence that any such action was intended to or had the effect of discouraging blacks from residing in the district.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by the Grandview district and its Superintendent.

Hickman Mills

The Hickman Mills School District was created as a result of a consolidation law passed in 1902. (Nesbit Depo. at 49). In the 1960's, there were two boundary disputes involving Hickman Mills: one with Center School District and one with the Grandview School District. In each case an election was held and the voters of Hickman Mills voted not to give up the land; the land involved in the Center dispute was granted to Center School District by a board of arbitration and the land involved in the Grandview dispute remained with Hickman Mills. (Nesbit Depo. at 57). Neither of the boundary disputes were racially motivated or had any racially discriminatory effect.

In 1964, an annexation election was held for the purpose of determining whether or not Hickman Mills should be annexed to the KCMSD and the proposal was defeated. (Tr. 4764-65, Wall Depo. Vol. I at 23). The Board of Education of Hickman Mills and its administrators adopted a neutral position on the issue. (Tr. 4765). Although race may have been an issue in the minds of some individual voters, (Tr. 4761-62), the primary reasons in favor of annexation to the KCMSD were financial ones, (Nesbit Depo. at 144-145), and the primary reasons against annexation concerned retention of local control of the schools. (Nesbit Depo. at 145). To the extent that race was an issue with some voters in the annexation election, the racial issue was not in any way caused by any action of the school district. The Court notes that at the time of the annexation election, the KCMSD was 65.2% white, (Def. Ex. K2), and the Hickman Mills district is not contiguous to the KCMSD. (P. Ex. 37).

Hickman Mills had no blacks living within its boundaries at any time prior to 1954 or at any time between 1954 and the mid-1960's. (Tr. 4620, P. Ex. 1785, Wall Depo., Vol. I at 35, Nesbit Depo. at 19). Without black residents, there could not have been transfers of black school children to any other district nor the operation of dual schools for black and white children. Plaintiffs have failed to show the absence of a school for black children within Hickman Mills precluded any blacks from settling there. The Court finds Hickman Mills has always and continues to operate a unitary school system.

The black enrollment percentage of Hickman Mills School District has grown from less than 1% in 1968 to 18.02% in 1983. (P. Ex. 53G, 2967). The 18.02% black enrollment figure exceeds the 14.53% black population of the Missouri portion of the SMSA, and one of plaintiffs' experts, John Kain, stated that the Hickman Mills School District had reached the percentage black

enrollment he predicted would have occurred if there had been no race discrimination. (Tr. 8060, P. Ex. 53G, 1265P). Black occupancy has increased in every census tract within Hickman Mills in the past decade. (P. Ex. 1, 9, and 36). Every elementary school within Hickman Mills has steadily gained in the number of blacks enrolled over the period 1968 to 1982; in 1968, 13 blacks were enrolled in the elementary schools and by 1982 that number had increased to 757. (P. Ex. 1865A).

There were several post-1954 complaints regarding alleged disparate discipline of black and white students and a need for improved race relations. (Tr. 5126-27, 9629-30). The complaints occurred between 1967 and 1983, a time period within which the black enrollment of the district jumped from 29 to 1,571 students. (P. Ex. 53G, 2967). There was no evidence that these intradistrict complaints had any segregative effect within Hickman Mills or in any other defendant school district.

On October 27, 1979, the Office for Civil Rights, following a compliance review of the pupil assignment practices of Hickman Mills, notified the district it was not in compliance with Title VI of the Civil Rights Act of 1964. Eleven classes were found to have minority students in excess of OCR's acceptable range and required the reassignment of 1,268 black students in 1979-80. (P. Ex. 2444, 2967). One day later, Hickman Mills responded by letter that the pupils had been assigned randomly by computer and the district immediately agreed to make necessary adjustments to correct the imbalance. The OCR was justifiably satisfied and this intradistrict incident had no discriminatory effect on any other school district dedendant. (P. Ex. 53G, 2967).

The Cooperating School Districts Association of Suburban Kansas City, of which Hickman Mills is a member, (Wall Depo. Vol. I at 41-42), does not operate with a racially discriminatory purpose. Its main functions are

bulk buying power, a forum for discussing education issues, (Tr. 4832), and trying to influence legislation. As discussed in the general findings, there has been no evidence that any action taken by the organization has had an interdistrict segregative effect on any school district defendant.

Because a large portion of the district is within the Kansas City city limits, it chose to support and share in the ½% city tax. (P. Ex. 2177). As discussed in the general findings *supra,* cooperation with the city in this regard was not racially motivated.

Hickman Mills has cooperated with other defendant school districts, including the KCMSD, to provide for the education of its handicapped and special education students. (P. Ex. 1949, Wall Depo. Vol. II at 12-15). Records indicate the nonresident transfer of students in 1976 (race unknown) to special education/handicapped schools in the KCMSD, or to the Herndon AVTS. (P. Ex. 1949). The number of such transfers is *de minimis* and again has had no segregative effect on Hickman Mills, the KCMSD or any other school district defendant.

Hickman Mills established a program for partially sighted and hard of hearing students and receives children from Grandview, Raytown, Lee's Summit, Center and Belton (nondefendant). There is no hint these children are received on other than a racially neutral basis. (Nesbit Depo. at 204-05).

Hickman Mills participates in the Herndon AVTS in the Raytown School District. (Nesbit Depo. at 169). The KCMSD did not invite nor suggest to Hickman Mills that it could participate in KCMSD's area vocational school. (Nesbit Depo. at 169). Hickman Mills' involvement in the Herndon AVTS has had no interdistrict segregative effect on any defendant school district in this case.

Hickman Mills opposed the Spainhower report because it, like other districts, feared the plan would result in a loss of local control of schools. (Nesbit Depo. at

173 and 178). There is absolutely no evidence that Hickman Mills' opposition to the plan had any effect on the racial composition of any school district defendant.

In regard to faculty, there is no evidence that Hickman Mills failed to hire any qualified black teacher who applied for a job with the district. Outside of the testimony of Ms. Betty Sapp, discussed *infra,* plaintiffs relied on the statistical calculations and conclusions of Dr. Roger Carlson. There is a variance between the number of black teachers hired by the school district as reported and analyzed by Dr. Carlson (P. Ex. 721F, reporting 8) and plaintiffs' other evidence: the EEO-5 forms for 1977 and 1978 (P. Ex. 990, reporting 9), and defendant's answers to interrogatories for the years 1977 through 1979 (P. Ex. 2967, reporting 11). Regardless of the number selected, the Court finds no correlation in Hickman Mills between the number of black teachers and the number of black students enrolled in the district. As more fully set forth in the general findings, employment practices and composition have no bearing on the racial composition of the student body and therefore no relevance to this litigation.

Ms. Betty Sapp, a former black teacher with Hickman Mills School District, alleged there were unfair disciplinary and class assignment practices regarding blacks at one junior high school. Ms. Sapp had also filed an employment discrimination charge against the district which was settled without litigation. Ms. Sapp's testimony that three black teachers besides herself were not rehired in 1979 (Tr. 8792) is contrary to the weight of the evidence. (P. Ex. 990, 2967). Even without questioning the witness' veracity, her allegations of discrimination are of an intradistrict nature, having no relevance to the issue of interdistrict liability.

There is no evidence that the Hickman Mills School District caused or contributed to cause housing discrimination within its boundaries. The map prepared by Dr. Tobin (P. Ex. 22), shows there were restrictive covenants

in the Hickman Mills School District, but there is no evidence which tends to prove that the school district had any complicity in the placement or enforcement of those covenants. Nor is there any evidence that any black family failed to move to Hickman Mills because of those covenants. The continued and substantial increases in the number of blacks enrolled in Hickman Mills (*see, e.g.,* P. Ex. 53G, Ex. 990), is convincing evidence that there is no barrier to blacks moving to the Hickman Mills School District nor is there any present effect of any past practices which may have had a discouraging effect on black moves. (Tr. 13,368-69).

Opposition by the Hickman Mills School Board to the rezoning of certain properties for trailer courts or apartment projects was premised on their belief that the tax revenues from such developments were insufficient to adequately support the per pupil expenditures for children from those developments. (Nesbit Depo. at 107, Wall Depo. Vol. II at 50-51). There is no evidence that any opposition was race related.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by Hickman Mills and its superintendent.

Independence

All of the Independence School District is situated in Jackson County, Missouri and includes the majority of the City of Independence, and a very small portion of the cities of Kansas City and Sugar Creek. (P. Ex. 37, 150). It lies directly east of the KCMSD and borders the Van Horn attendance area. (P. Ex. 36B). The Van Horn attendance area includes the former Rock Creek Elementary School District, the Sugar Creek Elementary School District and the Pitcher-Fairview Elementary School District. (Tr. 6120). Currently, the Van Horn attendance area is, with small exception, completely

within the limits of the City of Independence. (P. Ex. 36). The Sugar Creek District annexed to the KCMSD in 1955. The Rock Creek School District joined the KCMSD in 1957 and the Pitcher-Fairview District joined the KCMSD in 1958. (Tr. 6120, P. Ex. 407). All students in the Rock Creek, Pitcher-Fairview and Sugar Creek school districts were white. (Tr. 1976). Each of these districts has continuously remained a part of the KCMSD since annexing to it.

In 1971, a group of KCMSD patrons living in the Van Horn attendance area initiated a proposal to de-annex the Van Horn High School attendance area from the KCMSD and to annex it to Independence. (Tr. 1975-76, 6155-60). These KCMSD patrons obtained a sufficient number of signatures to call for an election in both districts. A number of reasons unrelated to race contributed to this proposal to change the boundaries. (Tr. 6156, Goodrich Depo. at 30). The voters in KCMSD defeated this proposition while the voters in Independence approved it. (Goodrich Depo. at 32). Because of the variance, the proposal was presented to a board of arbitration who decided not to approve it, thereby keeping the Van Horn attendance area in the KCMSD. (Goodrich Depo. at 32). The Court finds this boundary proposal was handled according to the requirements of the applicable and racially-neutral Missouri statutes. Whatever the intent of the patrons proposing the change may have been, there is no credible or persuasive evidence that the KCMSD, the Independence School District, the state or any other governmental official or entity acted with any racial animus. The Van Horn attendance area has continuously remained in the KCMSD. Even if this proposed change was racially motivated, there has been no effect on the boundaries or racial composition of the KCMSD, Independence, or any other school district. (Tr. 2054-55).

There have been no attempts or proposals to change Independence's boundaries since 1974. Considering all the evidence, the Court finds the Independence bound-

aries were formed and maintained for racially neutral reasons; the district has never annexed or failed to annex any territory for any reason related to race. The current boundaries are racially neutral and unitary in all respects.

There is a well-established stable black community in the Independence School District, primarily centered in the City of Independence. (Tr. 4570-71). Because of state-mandated segregated schools, black children, from 1866 until integration, attended the Douglass School (later renamed Young). (P. Ex. 39). The black school offered only elementary classes until it added ninth grade in 1920, tenth grade in 1934, and eleventh and twelfth grades in 1935. (P. Ex. 39). In 1945, the high school portion was closed and those students were transported to the KCMSD. Young continued to operate elementary classes for black children until 1957. (P. Ex. 39).

The followning chart indicates the number of blacks of school age enumerated and enrolled in Independence for the school years shown:

School Year	Enumerated	Enrolled Elementary	Enrolled High School	Enrolled Total
1930-31	235			153
1931-32	246	182	19	201
1932-33	238	174	12	186
1933-34	242	168	18	186
1938-39	225	144	52	196
1939-40	219	127	56	183
1940-41	207	123	49	172
1941-42	258	104	51	155
1942-43	251	103	53	156
1943-44	248	85	42	127
1944-45	236	78	42	120
1945-46	226	75	*	75
1947-48	151	97		97
1948-49	161	108		108
1949-50	160	106		106
1950-51	157	104		104
1951-52	142	108		108
1952-53	151	110		110
1953-54	147	124		124

*** In 1945, the Young High School closed and students were transported to the KCMSD. (P. Ex. 39).**

See P. Ex. 1787. Independence paid the tuition and transportation for the black high school students transported to the KCMSD. (Tr. 1719, Plucker Depo. at 50 and Ex. 5 thereto). From 1945 to 1954, approximately 100 such transfers occurred. (Tr. 4560). Even if all such transferred students moved from Independence to the KCMSD, the Court finds they are of insufficient number to have had a substantial effect on the racial composition of Independence or the KCMSD. The few transfers between Independence and the KCMSD for this nine year period was not a direct and substantial cause of the racial composition of the KCMSD, Independence or any other school district. The Court also finds that the number of blacks, if any, that left Independence over the 1945 to 1954 time period because the black high school was not maintained is *de minimis.* Assuming all blacks who lived in Independence and attended high school in the KCMSD left Independence, went to the KCMSD, and did so because there was no black high school in Independence, the Court finds that any such migration has had no significant effect on the racial composition of the KCMSD, Independence or any other school district defendant.

All transfers between Independence and the KCMSD stopped immediately after *Brown.* On July 8, 1954, the Independence Board of Education adopted a resolution to accept all its black students of high school age, that is grades 9 through 12, in its junior high and high school in the fall of 1954. (P. Ex. 2254 and Plucker Depo. at 79, 82). Between 1954 and the 1957-58 school year, the remaining grades were integrated. (P. Ex. 2254, 3317 and Plucker Depo. at 85-86). The plaintiffs' expert, Dr. Orfield, testified that gradual integration of black students over a few years after *Brown,* had no significant effect. (Tr. 14,926). The Court agrees and finds that the operation of the Young school for elementary students for a short period after 1954 had no significant effect on either Independence or the KCMSD. Independence fully and adequately discharged its affirmative duty under

Brown by 1957-58, and there are no vestiges of the prior dual school system remaining.

The Independence School District experienced a steady growth in total enrollment from 1950-51 to 1970-71, when it peaked at 16,801; enrollment has steadily declined since. (P. Ex. 15A, 991B, 2967). Black enrollment, in that peak year, was 145 students or .9% of the total. (P. Ex. 53G, 991 and 991B). While the total black enrollment in 1982 was actually five less than in 1970, because of the declining white enrollment black students comprised 1.2% of the total student enrollment. (P. Ex. 53G, 991).

There is no evidence that students are assigned to schools within Independence on a racially discriminatory basis. Nor is there evidence that Independence discriminates in providing facilities, extracurricular activities, transportation, or any other student service.

Independence is a member of the Cooperating School Districts Association of Suburban Kansas City, an organization providing legislative information and group price discounts. (Goodrich Depo. at 32-34). As reiterated in the general findings, there is no evidence that this organization was formed to act or has, in fact, acted in a racially discriminatory manner. Nor is there evidence that this group was formed to harm, or has harmed, blacks or the KCMSD.

Because a portion of the Independence School District is within the municipal boundaries of the City of Kansas City, Independence supported and shared in the proceeds from the city's ½% sales tax. (P. Ex. 1999). As with other school district defendants, there is no indication that Independence's agreement to share in this tax was in any way racially motivated. (*See,* general findings at 20-21).

In regard to special education, Independence has cooperated with a number of school districts to provide a

broader range of educational programs to meet the needs of particular students. Independence sent its handicapped and special education students to various schools in the KCMSD, including the Delano School, when Independence did not have proper facilities to educate them. (Goodrich Depo. at 146). Subsequently, Independence stopped sending its handicapped students to the KCMSD because of the hardship on the students. (Goodrich Depo. at 146-48). Today, Independence provides special education for the physically and mentally handicapped in its own district. Visually handicapped children participate in the Blind-Deaf Center operated by the Blue Springs School District. (Goodrich Depo. at 146-48). There is no evidence that any of these cooperative endeavors for students with special educational needs were or are motivated by racial animus or had a racially segregative effect.

Prior to 1971, Independence provided vocational education at schools within its district. (Plucker Depo. at 118-19). Then, in 1971, the Raytown School District invited Independence to participate in its AVTS (P. Ex. 1537), and Independence agreed. (Peters Depo. at 111). The Court finds that the KCMSD did not invite or suggest to Independence that it could participate in the KCMSD's AVTS. (Goodrich Depo. at 150). The Court further finds that the KCMSD wanted to operate its own AVTS and had substantially completed the steps necessary to do so before Independence or any other school district contemplated participation in the Raytown AVTS. (Tr. 6221-22, 6360-62). (*See also*, vocational education, general findings, *supra*). There is no credible evidence that Independence's decision to participate in the Raytown AVTS and not to participate in any other AVTS was motivated by any racial animus.

The Spainhower plan was discussed and opposed by the Independence Board of Education because of its proposed elimination of local control of schools. (Peters Depo. at 71).

Due to the small portion of the Independence School District that is contained within the city of Kansas City, it would have been virtually unaffected by House Bill 171. (P. Ex. 36).

In regard to employment practices, Independence has hired teachers of all races on the basis of ability, the number of openings, and the number of applications. Independence has employed black teachers throughout its history. (P. Ex. 2967, Plucker Depo. at 119). All black teachers employed by the Independence district before the *Brown* decision were integrated into the district's faculty in the secondary schools. (P. Ex. 2255). No black teacher was fired, demoted or treated unfairly in any fashion. (Plucker Depo. at 120). And while Independence has made a good faith effort to hire every black teacher that applied, (P. Ex. 2967), some qualified black candidates have not applied because the KCMSD's salary schedule was better than that offered by Independence. (Tr. 1768, 6393 and Peters Depo. at 92). Independence has also encouraged black teachers to become administrators and is the only suburban district with a black principal. (P. Ex. 2967). The Court also finds that the proportion of black teachers in Independence is within the "acceptable range" of the "expected number" predicted by plaintiffs' statistician, Dr. Roger Carlson, even though Dr. Carlson did not consider that Independence hired five black teachers between 1973 and 1980. (Tr. 6446 and P. Ex. 2967). Even so, as fully discussed *supra,* there is no substantial or credible evidence that any relationship exists between the racial composition of the Independence faculty and the racial composition of the student body of Independence, the KCMSD or any other school district.

In regard to housing, there has been no evidence that Independence acted to lure or to encourage white families or to discourage black families from moving into Independence. Nor has Independence involved itself in

decisions of other entities relating to zoning or the type or placement of housing to be constructed within its district. (Goodrich Depo. at 63-64, Peters Depo. at 51, Plucker Depo. at 130-31). Independence has never allowed any non-resident white student to transfer to Independence from the KCMSD.

Fred Cioffi, an investigator for HEW, testified that Independence fully cooperated in his investigation of a rumor that there were transfers of white students from the KCMSD to Independence. His investigation found no such transfers. (Tr. 10,156-57).

The Court finds that Dr. Tobin's map of restrictive covenants showed few such covenants in Independence. (P. Ex. 22A). Moreover, there is no evidence that the district had any complicity in the placement or enforcement of those covenants nor is there any evidence that any black family failed to move to Independence because of those covenants. In fact, blacks now live in the neighborhoods which were covered by those restrictive covenants. (Tr. 1734).

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact on any other district, the Court will grant the Rule 41(b) motion filed by the Independence School District and its superintendent.

Lee's Summit

Lee's Summit Reorganized School District R-7 (Lee's Summit) was created in 1949 by a popular vote of the people residing in 18 rural district that were to comprise the proposed district. (Campbell Depo. at 97). Only two of the 18 rural districts operated both an elementary school and a high school; none operated a black school. (P. Ex. 150; Campbell Depo. at 72, 87). Neither the Lee's Summit R-7 nor any of its predecessor districts have ever been contiguous with the KCMSD. (P. Ex. 37).

The Court finds that the boundaries of the Lee's Summit district and the boundaries of the 18 predecessor districts were not established with a racially discriminatory intent.

With the exception of four minor boundary changes in the 1960's and 1970's, none involving the KCMSD, the Lee's Summit District remains the same today as it was in 1949. The Court finds that those boundary changes were not racially motivated and had no discriminatory impact on the Lee's Summit or any other school district. (P. Ex. 150, 258, 3330, Campbell Depo. at 116-123, Copeland Depo. at 48-50).

There was, prior to 1954, a black community in the City of Lee's Summit in the old Lee's Summit No. 79 District (now a part of the present Lee's Summit School District). (P. Ex. 37A). Many of those families had no children, (Tr. 1208-12, 1216, 1736-37), so there were never more than a few black children in Lee's Summit in the early 1900's. (Tr. 1258-60, 1267). The 1949-50 school enumeration shows only four black families in the district with children. (P. Ex. 1802).

The Court finds that except for one or two black students in only three or four isolated years between 1900 and 1954, no predecessor districts other than old Lee's Summit No. 79 had any black students. (P. Ex. 49). The Court finds that the following is the black enumeration for the old Lee's Summit No. 79 and the Lee's Summit R-7 school district for the years 1915-16 through 1954-55:

School Year	Black Enumeration
1915-1916	1
1920-1921	7
1922-1923	4
1923-1924	4
1924-1925	4
1925-1926	4
1926-1927	4

School Year	Black Enumeration
1927-1928	2
1928-1929	2
1929-1930	4
1930-1931	7
1931-1932	3
1932-1933	5
1933-1934	6
1934-1935	5
1935-1936	6
1936-1937	7
1937-1938	8
1938-1939	6
1939-1940	7
1940-1941	7
1941-1942	7
1942-1943	6
1943-1944	8
1944-1945	8
1945-1946	10
1946-1947	13
1947-1948	12
1948-1949	10
1949-1950	10
1950-1951	8
1951-1952	6
1952-1953	7
1953-1954	6
1954-1955	5

(P. Ex. 1799, 1801, 1802). The number of blacks enumerated gradually increased from 1915 until 1947. After remaining fairly constant for four years, the number gradually declined. Based on this pattern, the Court finds there was no significant depopulation in the Lee's Summit R-7 or the old Lee's Summit No. 79. If all these blacks had left Lee's Summit and moved to the KCMSD and did so because there were no black schools in the district after 1910, the numbers are still too insignificant to have any substantial segregative effect on either the KCMSD or Lee's Summit.

Because of the state-mandated separate schools, the old Lee's Summit School District operated a black school until approximately 1910, at which time it was closed because there were so few black children. (Tr. 1199-1200, 1221). Despite the fact that there were no black schools after 1910 in Lee's Summit, black families moved to the district before 1954. (Tr. 1153-54, 1212-13, 1252-53, 1285-86, 1318, 1735, 2124). The old Lee's Summit No. 79 District transported its black students, from 1930-31 to 1940-41, to the Pleasant Hill School District. From 1941-42 until 1944-45, blacks were transported to the Young School in the Independence School District. From 1944-45 until 1950-51, old Lee's Summit (and, after 1949, Lee's Summit R-7), transported black elementary students to Young and its black high school students to the KCMSD. From 1951-52 until 1953-54, all black students from the district were transported to the KCMSD. (P. Ex. 1800, 1801, 1802, 1863). The Court finds that old Lee's Summit and Lee's Summit R-7 transported black students to the KCMSD for only ten years. The total number of individual black students transferred was approximately 15, (Tr. 1256-58, 1742, and 5961, P. Ex. 1799, 1800, 1801, 1802, 1810, 1811, 1863, 3350), and the Lee's Summit District provided the transportation and tuition. (Tr. 1257, 1742, 1747, P. Ex. 3350, Campbell Depo. at 159-61, 166-67, and 172).

The Court finds the fact that the Lee's Summit School District and its predecessors did not maintain a black school from 1910 to 1954 and the fact that the Lee's Summit District transferred a *de minimis* number of black students to the KCMSD from 1945-46 to 1953-54, have not had and do not have any significant effect on the present racial composition of either the KCMSD or Lee's Summit School District.

In the 1954-55 school year, immediately after the *Brown* decision, the Lee's Summit District integrated its schools and all involuntary transfers of black students

were stopped. One black student, at her request, was permitted to attend her final year of high school in the KCMSD during the 1954-55 school year. (Tr. 1267-68, 1274-76, Campbell Depo. at 174-75). After the 1954-55 school year, all students, regardless of race, meeting the racially neutral residency requirements of the school district, were permitted to attend school in the Lee's Summit R-7. The district discharged its affirmative duty and constitutional obligations under *Brown* by, among other actions, ceasing all black transfers and admitting all students to its schools on a racially neutral basis. The Court finds there are no vestiges of the prior legally mandated segregated school system in the district.

Total student enrollment in the district steadily increased to its peak of 7,001 students in 1979 and has gradually declined since. (P. Ex. 53G, 993, 2967). The number of black students enrolled in the district has increased regularly from 1 in 1968, to 87 blacks enrolled in 1980. (P. Ex. 53G). Presently, black students are enrolled in every school in the Lee's Summit District. There is only a single high school in the district and all students attend it. (P. Ex. 2967).

Plaintiffs presented no evidence showing that the Lee's Summit District provides facilities, extracurricular activities, transportation, or any other student service on a racially discriminatory basis. Nor has there been any evidence of school site selection or closings with a discriminatory intent. Only students whose families reside in Lee's Summit R-7 or who own property in the district are permitted to attend school in the district. Those students whose parents only own property must pay tuition set off by the amount of tax paid on the property. (P. Ex. 3337, Campbell Depo. at 84-85, 107, 125-126). There is no evidence that this policy was racially motivated or applied in a discriminatory manner but is the result of sound administrative, educational, and financial concerns. There is no evidence that Lee's Summit

has acted with an intent to discriminate or to affect the racial composition of the KCMSD or any other school district at any time since the *Brown* decision. Lee's Summit is presently operating a unitary school district.

Lee's Summit joined the Cooperating School Districts Association of Suburban Kansas City for purchasing power, and were not motivated by any racial animus. (Copeland Depo. at 81-84, Campbell Depo. at 64-65).

In regard to the ½% city tax, such a small part of the City of Kansas City is in Lee's Summit, that the district's sales tax proceeds were a "very, very small portion" of the district's receipts. (Campbell Depo. at 59, Copeland Depo. at 100). The Court finds no discriminatory intent by Lee's Summit in regard to these tax receipts and the Court finds that the sales tax has had no significant segregative effect in any school district.

There have been, over the years, isolated instances where special education or handicapped students were transferred to another district. Frequently, those children were sent to private schools. (P. Ex. 3495; Campbell Depo. at 38-40, 46-48, Ex. 114 thereto; Copeland Depo. at 42, 64-65). School district records for 1975 indicate 55 students attended school in another district with tuition being paid by Lee's Summit. They were all learning disability or special education and handicapped programs. (P. Ex. 1722). The Court finds that these transfers were not done with any discriminatory intent and have had no significant effect on the present racial composition of the Lee's Summit or any other defendant school district. Nor do these cooperative arrangements abrogate the district's autonomy.

The Lee's Summit R-7 district participates in the Herndon AVTS located in the Raytown School District. The Court finds no discriminatory intent or racial motivation in Lee's Summit's participation in the Herndon AVTS, which is substantially closer than the KCMSD AVTS. (P. Ex. 34). Plaintiffs presented no evidence that the

KCMSD ever approached the Lee's Summit district about participating in an AVTS or ever invited Lee's Summit to participate in the KCMSD AVTS once it was established. The fact that Lee's Summit never participated in the KCMSD AVTS is not because of any racially discriminatory intent by the Lee's Summit District.

There is no evidence demonstrating any involvement by Lee's Summit School District in House Bill 171.

The Lee's Summit School Board took no position on the Spainhower recommendations. (Campbell Depo. at 140, Copeland Depo. at 99). Nor was race ever discussed by the Lee's Summit District in connection with the recommendations. (Copeland Depo. at 110-111).

Although there are no black faculty or staff presently employed full-time by the district, (P. Ex. 994, 2967), plaintiffs have failed to show by a preponderance this was due to racial discrimination rather than other factors such as wages or the district's location. The Court finds that affirmative steps have been taken by the Lee's Summit District yet blacks have failed to pursue, seek, or accept the employment opportunities made available to them. There have been good faith efforts by the Lee's Summit district to employ blacks. (P. Ex. 2967). In any event, as reiterated in the general order, this is not an employment discrimination case and there is no credible evidence that the hiring practices of the Lee's Summit district are the cause of the present racial composition of the KCMSD or Lee's Summit School Districts.

In regard to housing, the Court finds that the school district was not involved in any way and was in no way responsible for the development of housing or housing policies by various municipalities either entirely or partially within the Lee's Summit School District. (Campbell Depo. at 21). The only concern Lee's Summit had with housing was its impact on the number of students that would be attending its schools. (Campbell Depo. at 67). With the exception of a legitimate racially-neutral concern

about trailer parks, (because they are taxed as personalty, not realty), the Lee's Summit School District did not involve itself in zoning questions or concerns. (Campbell Depo. at 137-39, Copeland Depo. at 87-89, 92).

In regard to racially restrictive covenants, the Court notes there were very few such covenants in Lee's Summit. (P. Ex. 22). There is no evidence that the Lee's Summit School District had any complicity in the placement or enforcement of those covenants or that any person was prevented from moving to Lee's Summit because of such covenants. There is simply no evidence that the Lee's Summit School District did anything to either lure white families or discourage blacks from moving into the district or engaged in any conduct with the intent or which had the effect of affecting the racial composition of the student enrollment in the Lee's Summit School District.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by the Lee's Summit School District and its Superintendent.

Liberty

The Liberty School District serves an area in Clay County, Missouri, centered in the community of Liberty, Missouri. The school district is not now nor has it ever been contiguous to the KCMSD. (P. Ex. 1, 1A, 9). There is no evidence that the formation of Liberty's boundaries or any annexation thereafter was accomplished with the purpose or effect of racial segregation. There is no evidence that any annexation took place for other than sound educational and practical reasons.

Based on the testimony of various witnesses and exhibits admitted, the Court makes the following findings regarding the education of blacks in the Liberty School District before 1954. Pursuant to the State mandated separate

schools, the Liberty School District operated, from at least 1907, the Garrison School for blacks. Garrison had grades one through eight until 1926 when it added ninth grade. (Tr. 479). In 1930, tenth grade was added, in 1933, eleventh and in 1953 all twelve grades were available. (Tr. 2504, 5358). Then, from 1953 to 1957-58, Garrison offered only elementary grades.

Blacks from Liberty and surrounding areas such as Excelsior Springs, Plattsburg, White Oak, Mecca and Shady Grove attended Garrison. (Tr. 3523-24). There was insufficient proof that either the quality of education offered or lack of certain grades at Garrison caused an out-migration of blacks from Liberty to the KCMSD.

In the years when high school was not available at Garrison, Liberty paid the transportation and tuition to send its black students to the KCMSD. That included 7 to 8 blacks who attended Lincoln for part of the 1945 or 1946 school year before Garrison hired another teacher. (Tr. 3522). Then, during the 1953-54 school year about 20 blacks were transported to the KCMSD. (Tr. 1831). The records from the KCMSD indicate a total of 13 blacks had been transferred from Liberty to its district before 1954. (P. Ex. 1775). The totals, even when liberally calculated, show less than 30 blacks were transferred from Liberty to the KCMSD in the years prior to the *Brown* decision. The Court finds this total too insignificant to have had a substantial segregative impact on either the KCMSD or Liberty.

The Liberty High School integrated in 1954. (Tr. 1858, 2799, P. Ex. 2259), while Garrison continued to operate as a segregated elementary school through the 1957-58 school year. (P. Ex. 2263). Thereafter, and continuing to the present, the Liberty School District has been completely integrated and unitary. (P. Ex. 2264). While the Board's failure to act immediately regarding Garrison is not commendable, the Court finds that its gradual desegregation plan, which integrated all its schools

within four years of the *Brown* decision, fully complied with the constitutional requirements of *Brown II*. *See*, 349 U.S. at 299-301. Moreover, plaintiffs' expert, Dr. Gary Orfield, opined that the operation of Garrison as an elementary school for blacks until 1958 had a small effect, if any, on the residential patterns of blacks in the metropolitan area. (Tr. 14,922).

The total student enrollment in Liberty gradually increased from 3,644 in 1968 to its peak of 4,014 students in 1974 and has been declining since. (P. Ex. 53G, 995). Black enrollment during the same period has declined slightly from 124 to 101 students, for a current total of 2.7% of the student enrollment. (P. Ex. 53G, 995). There is no evidence that students are assigned to schools on a racially discriminatory basis or that facilities, extra-curricular activities, transportation, or other student services are provided in a discriminatory fashion.

Because a tiny portion of the City of Kansas City extends to the Liberty School District, it chose to participate in the ½% sales tax with the City. It received less money than any other defendant district. (P. Ex. 1999). Regardless of the amount, there is no evidence that this cooperation with the City of Kansas City had any racially segregative effect on the KCMSD or Liberty School District. (*See* general findings *supra*).

In regard to special education, Liberty, like other SSDs, may transfer some specially needy students to other districts for educational opportunities. Again, there is no evidence that Liberty's cooperation in this regard affected the racial composition of any district or compromised Liberty's status as an autonomous entity.

Liberty participates in the AVTS located and run by the Excelsior Springs School District, which is not a party to this action. There is no evidence that the Liberty School District participates with the Excelsior Springs AVTS for the purpose or the result of segregating students on the basis of race. Excelsior Springs, like Liberty,

is located north of the Missouri River and is not contiguous at any point with the KCMSD. (P. Ex. 37).

There is no evidence that the Liberty School District took any position with regard to any legislation or propositions of reorganization, specifically, H.B. 171 and the Spainhower recommendations. The Court finds that the failure of the Liberty School District to take a position on any of the reorganization matters had no effect on the racial composition of any school district. Nor has there been a showing that Liberty's participation or nonparticipation in any cooperative venture with any other school district was undertaken with the purpose or effect of segregating students in either its district or in the KCMSD.

In regard to faculty employment, the Court once again notes this is not an employment discrimination suit but a school desegregation suit. And while Liberty has employed only up to 2 black faculty members in any given school year, (P. Ex. 996), plaintiffs have failed to show a correlation between minority faculty and the number of blacks enrolled in the district. (*See* general findings *supra*). There is no credible evidence that the Liberty School District has engaged in any discriminatory employment practices nor have any complaints to that effect been filed against the district. The Court finds that of those black teachers who taught in the prior dual school system at least one stayed to teach in the integrated system, Professor Gantt, and the others left for reasons which the plaintiffs have failed to show. (Tr. 1837-38, 2381-82, P. Ex. 2254, 2265).

There has been no evidence that the Liberty School District has involved itself in decisions relating to zoning or the type and placement of housing within its district. The school district opposed trailer courts, like other school districts, not on racial grounds but because they were assessed as personalty rather than realty. (Riggs Depo. at 39-40, Stockwell Depo. at 50). The district tried to keep abreast of housing developments, (Stockwell Depo.

at 49-50), simply to provide for projected student population. (Riggs Depo. at 13, Lidikay Depo. at 132).

There were a few racially restrictive covenants identified within the Liberty School District (P. Ex. 22), but there has been no evidence that the Liberty School District either placed or enforced any of those covenants. Nor has it been shown that a single black family refrained from moving to Liberty because of a racially restrictive covenant. There is no evidence that the Liberty School District acted in any manner to attract whites or to discourage blacks from moving to the district.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact in any other district, the Court will sustain the Rule 41(b) motion filed by the Liberty School District and its superintendent.

North Kansas City

The North Kansas City School District (NKC) has been in existence since approximately 1913. (Tr. 5960-61). At various times, pursuant to a vote of the people, other elementary school districts have annexed to NKC, (Doolin Depo. Vol. I at 22-23), because many of them did not have a high school within their district and had been sending students on a tuition basis to NKC. All of these districts were contiguous to NKC. (Doolin Depo. Vol. I at 20-21). There is no evidence that the annexation of these districts to NKC or any other annexation to NKC was related to race or had a discriminatory effect. In 1962, NKC passed a resolution advising surrounding districts without high schools that were sending their high school students to NKC on a tuition basis that NKC could not continue to accept such students due to overcrowding and financial considerations. (Doolin Depo. Vol. I at 44). Race played no part in this policy. There is no evidence that NKC established, decreased, enlarged or maintained its boundaries for any reason related to race.

In regard to the education of black students prior to 1954, the Court makes the following findings based, unless otherwise specified, on the testimony of Ms. Pratt Davis, Ms. Feeler and Mr. Waller. (*See* Tr., Oct. 31 and Nov. 1, 1983). From 1900 to 1954, there were some black families residing within the present boundaries of the NKC school district. The largest community of blacks was in the White Oak area, from 1915 to the 1940's. Because Missouri mandated separate schools, the black children attended the White Oak Elementary School, supported by the rural black community. Between 15 to 17 students were enrolled in that school. (P. Ex. 2397). The White Oak school operated intermittently until 1944. (P. Ex. 39). Those students wishing to go to high school traveled either to Garrison in Liberty or to R. T. Coles and Lincoln in the KCMSD with NKC paying their tuition and transportation. According to planntiffs' expert, Dr. Anderson, about 10 to 15 students transferred to the KCMSD from the NKC area between 1900 and 1954. (Tr. 5960-61).

The total number of transfers from NKC to the KCMSD prior to 1954 did not have a substantial current effect on the racial composition of either district. Even if the Court concludes, which it does not, that the blacks living in NKC before 1954 moved to the KCMSD for schools, the numbers are too insignificant to have other than a *de minimis* effect on any defendant school district.

The Court finds that immediately after the *Brown* decision, the 1954-55 school year, the remaining black children in the district, the Pratts, were given the option of attending NKC schools or attending one more year in the KCMSD. (P. Ex. 2942, Schooling Depo. at 26-27). Because of various school activities in which the children were engaged, Mrs. Pratt elected to have her children continue in the KCMSD. One of her children, Ms. Shirlene Pratt Davis, testified at trial that no such option was provided. (Tr. 162-63). The Court does not find

her testimony credible because she was only sixteen years old at the time and may have been at work during Dr. Schooling's visit with her mother. (Tr. 101, 204).

Even if the Court accepted Ms. Pratt Davis' version as true, the interdistrict transfer of the Pratt children is too insignificant to have had any effect, much less a substantial current effect, upon any school district.

The Court finds that NKC discharged its affirmative duty and constitutional obligations under *Brown* by, among other things, ceasing all black transfers and admitting all students to its schools without regard to race by 1955. There are no remaining vestiges of the prior dual school system in the district.

Presently, students are assigned to schools within NKC on a racially neutral basis. Attendance zones within NKC have been drawn without regard to race and without any intent to discriminate. (P. Ex. 997A, Waier Depo. at 74 and 241). There is no evidence of race discrimination on the basis of providing facilities, extracurricular activities, transportation or any other student service.

The school district's total enrollment steadily increased from 1953 to its peak in 1970 and has gradually declined since. (P. Ex. 2967). Black student enrollment has grown from zero in 1968 to 174 in 1984. (P. Ex. 53G, 997, 997A, and 2967).

While there was testimony of race discrimination against one black child in the Briarcliff Elementary School in 1974, it was a matter of intradistrict concern and has had no interdistrict effect. (Tr. 227).

A few witnesses testified that the North Kansas City area once had a reputation of being inhospitable to blacks. The Court finds that there is no evidence that NKC school officials or *any* school district caused or contributed to cause this alleged reputation. Nor does the Court find it relevant or significant as a possible interdistrict effect.

Because a portion of Kansas City extends into NKC, it agreed to share in the ½% sales tax. (P. Ex. 1999). Again, no evidence exists tending to show this cooperation with the City of Kansas City had a racially discriminatory purpose or effect.

Over the years, a few handicapped children or other special educationally needy students have been transferred to specialized schools in other districts. There is no evidence that NKC discriminated in this area or that these determinations were made in a manner that was not racially neutral.

NKC has never participated in a cooperative vocational education project with another school district. (Doolin Depo. Vol. I at 47). The decision to provide vocational education in the NKC schools and not to participate in any cooperative vocational education program is not related to race. Further, there is no evidence that the KCMSD ever contacted NKC to propose any sort of cooperative vocational educational program involving those two districts. (Waier Depo. at 130).

NKC supported passage of House Bill 171, not for racially discriminatory reasons but for tax and local control reasons. (P. Ex. 430, Doolin Depo. Vol. II at 118-120).

In regard to faculty employment, there is no evidence that faculty or other school staff are assigned within NKC on a discriminatory basis. NKC has followed the practice of hiring the best person available for an open position. (Waier Depo. at 140-43, Atkin Depo. at 34 and P. Ex. 2967). The number of black teachers in NKC has increased from one in 1972-73 to fifteen in 1980. (P. Ex. 998 and 2967).

Plaintiffs' employment discrimination evidence against NKC is premised primarily upon the analyses and opinions of their statistician, Dr. Carlson. The Court finds Dr. Carlson's opinions in regard to NKC unpersuasive.

Dr. Carlson calculated that NKC had only hired three black teachers between 1973 and 1980 when the correct number was 14 to 15 black teachers hired. (P. Ex. 998 and 2967). The correct number is within two standard deviation points of Dr. Carlson's predicted number of hirees. (P. Ex. 721F, Table G). Furthermore, as described more fully in the general findings *supra*, there is no credible evidence of any correlation between the racial composition of a school district's faculty and staff to the racial composition of its student body. Plaintiffs' own evidence refutes their theory: the black enrollment in the Hickman School District has grown rapidly from 29 (.20%) in 1968 to 1,497 (16.70%) in 1982. (P. Ex. 53G). This increase took place while Hickman Mills, according to Dr. Carlson's data, hired eight black teachers from 1970 to 1983. (P. Ex. 721F, Table G). That number is less than that hired by NKC. The numbers simply do not reflect a correlation between the racial composition of the staff and the student body.

In regard to housing, there has been no evidence that NKC acted to lure or encourage white families to move into NKC or to discourage black families from moving there. In fact, it has been NKC's policy not to attempt to influence the type of housing that was built or not built in the district. (Doolin Depo. Vol. I at 119, Ewing Depo. at 27, 106, and Waier Depo. at 77, 79-80). The Court finds there is no credible evidence of housing discrimination in NKC that has had a substantial interdistrict segregative effect. Dr. Tobin's map showing restrictive covenants cited very few such covenants in NKC. (P. Ex. 22). In fact, much of the NKC development occurred after the Supreme Court mooted the effect of these covenants in 1948. *See, Shelley* v. *Kraemer*, 334 U.S. 1 (1948). In any event, there is no evidence that the NKC School District participated in the placement, encouraged the enforcement of these covenants or that any blacks failed to move to the district because of the covenants.

The NKC district is interested in housing only to the extent of planning construction of schools and accommodating the students generated by the new housing. (Doolin Depo. Vol. I at 30, 33, 124, and Ewing Depo. at 23). These actions by NKC were in no way related to race but were simply to plan to meet the educational needs of the district's students. In a few instances, NKC contacted zoning officials about zoning matters when it was necessary to arrange for rezoning or the like to accommodate the purchase or sale of property which the school district owned or wished to acquire. (Doolin Depo. Vol. I at 33). These contacts were not race related and did not impact upon the race of students attending KCMSD schools.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substanital segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by NKC and its Superintendent.

Park Hill

Park Hill Reorganized School District No. 5 (Park Hill) is located wholly within Platte County, Missouri (Harmon Depo. at 31), and is not contiguous to the KCMSD. (P. Ex. 22A). The school districts in Platte County were consolidated and reorganized between 1949 and 1951 with the Park Hill District coming into existence as a result of a consolidation of five school districts with the old Parkhill School District in 1950, followed by a reorganization of six additional districts with the Consolidated District in 1951. All took place pursuant to a popular vote of the residents of the affected areas. (Aikmus Depo. at 22-23 and Ex. 3 and 4 thereto). The area encompassed by the Parkhill School District was rural and agricultural prior to 1947. (Tr. 1499, 2718, 3169, 3182, 3138, 13,022-23, P. Ex. 22 and 22A). The Court finds that the establishment of the Park Hill boundaries

in 1951 were not racially motivated and have not had any segregative effect in either the Park Hill district or any other school district and there have been no significant boundary changes since that time. (Jones Depo. at 56-57, 74-75, Harmon Depo. at 32-34 and Shipley Depo. at 27, 68-70).

Historically, there was a black community in the area that became the Park Hill District, centered in the town of Parkville. (*See, e.g.*, P. Ex. 2, 8B, 37, 37A, 51A and 51B). In 1900, there were approximately 250 blacks in the two townships, Pettis and Waldron, that subsequently became what is the Park Hill School District. (May Township as constituted in 1900 was also part of what became the Park Hill District, but had few blacks. *See* P. Ex. 51A). By 1910 the black population of Pettis and Waldron Townships had decreased by 66 persons, and the white population had decreased by over 400. (P. Ex. 51A). Since Waldron was the more agricultural area (Tr. 2718-19, 3138 and 3182), it is reasonable to infer that the decline in population between 1900 and 1910 was associated with the decline in the availability of agricultural employment and supports the conclusion that the decline in black population in this area was the result of economic changes in agriculture rather than the availability of schools. Between 1910 and 1960, the black population in the area covered by Pettis and Waldron Townships decreased by fewer than 50. (P. Ex. 51A). The black population of Pettis Township mostly concentrated in Parkville, where jobs were available. (Tr. 329-330, 1466, 2720, 3169 and 3221). The Court finds from the weight of the credible evidence that economic conditions and employment opportunities, rather than schools, were the significant factors affecting choice of residence by those blacks leaving and those blacks remaining in the Park Hill area between 1910 and 1960.

Even if schools were a significant factor in the out-migration of blacks from the Park Hill area subsequent to

1910, the Court finds that the numbers of persons out-migrating from the Park Hill area to be so minimal that it could not have had any effect on the racial composition of Park Hill schools or schools in any other district including the KCMSD.

As of the 1940's, there were 15 to 20 black families residing in Parkville and several more families to the west of town. (Whipple Depo. at 21-22, Jones Depo. at 10-11 and Tr. 3165-69, 3242). Only one black family did not reside in the immediate Parkville area, the Pearl family, (Jones Depo. at 35), but resided on a farm located in what became part of the Platte City district. (Tr. 3143 and 3158).

Since at least 1903, the old Parkville district (and Park Hill after 1951) continuously operated a black elementary school, Banneker, in Parkville. (Tr. 2828, P. Ex. 77A, and Jones Depo. at 48). From at least 1924 on there were between 25 and 30 students in that school. (Tr. 2828, 3181 and Jones Depo. at 48). According to various witnesses (Curtis, Hoskins, Jackson and Douglass), Banneker accepted blacks from surrounding black communities, used old books and supplies from Grayden Elementary (white school) and those purchased by the teachers from personal funds. Banneker operated as a segregated black elementary school until it was closed in 1959. (P. Ex. 39, 2278). There was insufficient proof that either the quality of education offered or lack of certain grades at Banneker caused an out-migration of blacks from Park Hill to the KCMSD. The Court finds that the operation of Banneker school could not and did not have a significant segregative effect upon the Park Hill District, the KCMSD or any other district.

Although there was no high school for blacks in what now constitutes the Park Hill School District, there is no evidence that black high school students from the area attended the KCMSD schools prior to 1940. (P. Ex. 1775). The evidence is that some black Parkville stu-

dents attended Summer High School in Kansas City, Kansas and others attended Kansas Vocational School (KVS) and still others attended church-related schools in both Kansas City, Missouri and Kansas City, Kansas. (Tr. 3170, 3187, 3189, 3226-27).

Between 1940 and 1956, black high school students from Parkville (up to 1951) and the Park Hill (after reorganization in 1951) districts attended the KCMSD schools. Tuition and transportation were paid by the Parkville and, subsequently, the Park Hill School District. (Tr. 1477-78, 3228-29, Jones Depo. at 27-28). No more than 7 students were transported in any year, and somewhere between 11 and 16, total, were actually transferred to the KCMSD schools from Parkville. (Tr. 2839, P. Ex. 1775, 1831, 2271A). The transfer of so few students to the KCMSD did not have any significant effect upon the racial composition of the Park Hill District, the KCMSD or any other district nor was it a cause of depopulation within the Parkville and the Park Hill District or impaction of blacks within the KCMSD.

On August 9, 1954, the Park Hill Board of Education decided to postpone desegregation of the high school for one year until the final decision of the Supreme Court in *Brown*. (P. Ex. 2270, Fickle Depo. at 33-34). In August, 1955, the Board again took up desegregation of the high school (at that time there were 42 blacks enumerated, 13 of high school age, (P. Ex. 2269), and voted to furnish tuition and transportation to the KCMSD for the 7 who enrolled for the 1955-56 school year. (P. Ex. 2271A). While the Board's failure to act immediately on the *Brown* decision is not commendable, the minutes reflect some genuine concerns about the students and their preferences and do not reflect any overt refusal to abide by the decision of the Supreme Court or any racial animus. (P. Ex. 2271). Park Hill High School was integrated in the 1956-57 school year, the junior high was integrated in the 1957-58 school year and the elementary

schools were integrated in the 1959-60 school year. (Tr. 2740, 2831, 2848, 2857 and Jones Depo. at 35-36, 103). Even though the Park Hill district did not completely integrate until five years after *Brown I*, the Court finds its gradual desegregation was within a constitutionally acceptable time span under *Brown II*. 349 U.S. at 299-301. In any event, there was no segregative impact upon any other defendant district. Since 1959 the Park Hill District has operated a unitary, fully integrated school district. (Tr. 1507). Black students attend each of Park Hill's schools (P. Ex. 999), and all students, regardless of race, attend neighborhood schools. (Tr. 1507, 1509).

There is no evidence that any person moved into or out of the Park Hill School District to the KCMSD or elsewhere because of the continued operation of segregated schools between 1954 and 1959. Additionally, Dr. Orfield, plaintiffs' expert, testified that the continued operation of segregated schools in Park Hill and other districts beyond 1954 had, at most, a small effect on residential patterns. (Tr. 14,926). In view of the foregoing, the Court must conclude that the continued operation of segregated schools until 1959 had no significant segregative effect on either the Park Hill School District or any other school district including the KCMSD and was not a cause of depopulation or impaction. The Court further concludes that the vestiges of the prior dual school system have been fully eliminated.

The number of black students in Park Hill schools has increased since 1976 a total of 110 students, while at the same time, the overall student population has fallen by 600 students. (P. Ex. 20A, 2967). The continued increase in black enrollment in the Park Hill District suggests that there are no remaining effects of the prior dual school system in that district.

Because a portion of the Park Hill School District is within the municipal boundaries of the City of Kansas City, Park Hill supported and shared in the proceeds of

the city's ½% sales tax. (P. Ex. 1748). As with other school district defendants, there is no indication that Park Hill's agreement to share in this tax was in any way racially motivated or had any racial impact.

The Park Hill District participates in the Platte City AVTS, a district not a party to this litigation. Both Park Hill and Platte City are contiguous districts north of the Missouri River, neither of which border the KCMSD. (P. Ex. 34). There is no showing that Park Hill's participation in this AVTS and not in KCMSD's AVTS is for other than obvious reasons of closeness and administrative convenience.

There is no evidence that Park Hill took any position with respect to House Bill 171 or with respect to the annexation of parts of the Park Hill School District by the City of Kansas City.

The Park Hill School District adopted a resolution on February 10, 1969 (P. Ex. 1728) indicating that it was opposed to the Spainhower recommendations because of the Board's concerns with finances, local control and representative government. (Harmon Depo. at 133-137). Such opposition was not motivated by racial animus and has not been shown to have had any significant effect on the passage or failure of any legislation.

While the records indicate Park Hill has hired few black faculty or staff, (P. Ex. 1000, 2967), plaintiffs have not established the number of blacks who applied for employment with the district. Nor is there any evidence that any black applicant for employment has ever been turned down by the Park Hill School District. There is no evidence that any person was not hired or was terminated by the Park Hill School District by reason of race. The evidence is that the school district's hiring practices are racially neutral and designed to affirm equal employment opportunity. (P. Ex. 2967, Jones Depo. at 93, Howard Depo. at 67-69, 113 and Shipley Depo. at 55-

57). Again, absent a nexus between faculty racial composition and student body racial composition, this evidence has no bearing on liability in an interdistrict case. (*See* general findings *supra*).

The Park Hill School District generally avoided all involvement in housing matters within its borders. (Jones Depo. at 45-46, Harmon Depo. at 49-52 and Shipley Depo. at 32-33). The district never opposed or took a position against apartments, trailer courts or subsidized housing and all are present within the district. Harmon Depo. at 49-52, 120-121 and Shipley Depo. at 32-33, 80). The district never took an active role in zoning matters, other than one incident involving a commercial development adjacent to one of its schools where service of alcohol was involved in addition to a boundary dispute. (Jones Depo. at 45-46, Harmon Depo. at 49-52, 120-121, Shipley Depo. at 32-33 and Howard Depo. at 31-35). Traditionally, the district's only involvement in development within its boundaries was an attempt to purchase school sites in areas where development was likely to occur. (Jones Depo. at 45-46, Harmon Depo. at 41-44, 115-116, 162 and Howard Depo. at 23). The Court finds no evidence that the Park Hill District was involved in making or carrying out housing policies. Further, the actions of the school district had no effect on the racial residential patterns within the Park Hill District and no interdistrict effect on racial residential patterns.

The Court finds there were 33 restrictive covenants identified in Platte County, most of them put in place between 1940 and 1950. (P. Ex. 22, 1239A). Before the *Shelley* v. *Kraemer* decision, 334 U.S. 1, the entire population in the county only increased by approximately 1,000 people. (P. Ex. 16A). Obviously, these covenants did not create a "white haven" in the county. The Court finds that the existence of the restrictive covenants had no effect on racial residential patterns within the Park Hill School District. Furthermore, there is no evidence

that the school district had any complicity in the placement or enforcement of those covenants.

The Court finds that the Park Hill School District has neither lured white families or discouraged black families from moving to the district. Plaintiffs' witnesses could only place three families from the KCMSD in the Park Hill School District.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact in any other district, the Court will grant the Rule 41(b) motion filed by Park Hill and its Superintendent.

Raytown

Consolidated School District No. 2 (Raytown) resulted, by popular vote of the people, from the consolidation of several rural school districts in 1903. (Herndon Depo. at 32-33). There have been no annexations or boundary changes since its formation, (Herndon Depo. at 34), and no evidence of a racially discriminatory intent or effect therefrom. Raytown is contiguous to the KCMSD on the east, southeast. (P. Ex. 37).

The Raytown Board of Education passed a resolution on July 7, 1975, that opposed any measure that would change, divide or enlarge its existing boundaries. (P. Ex. 2194). Although the KCMSD is mentioned in the resolution, the Court finds this was a vote affirming local control; there is no evidence of discriminatory purpose or impact. Moreover, the resolution was a nullity because the people in the district, by petition and vote, could change their boundaries notwithstanding the Board's position.

Prior to 1954, there were no black enclaves or communities within the boundaries of the Raytown School District (P. Ex. 37A, Lowell Depo. at 8-9, 14). No black students, therefore, were transported out of the Raytown

District to the KCMSD or any other district, (Lowell Depo. at 9), nor was there a need for separate schools as mandated by the state. Plaintiffs have failed to show that the absence of a separate school for blacks within the Rayton School District prior to 1954 precluded any blacks from settling there.

The Raytown School District experienced a steady growth in total enrollment from 1953-54 to 1969-70, when it peaked at 16,058; enrollment has gradually declined since. (P. Ex. 2967, Herndon Depo. at 44). No black students resided within or were enrolled in the Raytown School District during the 1953-54 or the 1954-55 school years. (Lowell Depo. at 13-14). Because the district did not maintain records of the race of the students during the 1960's, (P. Ex. 2967), the Court cannot ascertain when blacks were first enrolled. The number of blacks has increased in the past decade from 13 enrolled in 1970 to 673 enrolled, 7.6% of the student body, in 1982. (P. Ex. 53G, Ex. 1001).

Because a portion of the Raytown School District is within the municipal boundaries of the City of Kansas City, (Lowell Depo. 8-9), Raytown supported and shared in the proceeds from the City's ½% sales tax (P. Ex. 1999). As with other school district defendants, there is no indication that Raytown's agreement to share in this tax was in any way racially motivated.

There are some students residing within the Raytown School District that have attended school in other districts because of handicap or for special education. (Atkin Depo. at 93-95, 97-98). Plaintiffs have not shown that such attendance for special education was influenced by or based on racial considerations. These transfers had no effect, in any event, upon the racial composition of Raytown or any other defendant district. Nor did the cooperative arrangements diminish the district's autonomy.

The district provides its students with vocational education at its Joe Herndon Area Vocational-Technical School

which was built after state approval in the early 1970's and opened in the 1973-74 school year. (P. Ex. 1537, Sheets Depo. at 16, 17-19). The decision to build an AVTS in the Raytown School District followed the expression of interest in participating in such a school by the Center, Grandview, Hickman Mills, Independence, and Lee's Summit School Districts. (P. Ex. 3271, Herndon Depo. at 124-128). There is no evidence that the creation of the Herndon AVTS nor the districts that sought to join therein were motivated in any way by a discriminatory purpose. The Herndon AVTS has operated at 80% to 90% of capacity throughout most years of its operation. (Sheets Depo. at 39). It has never received any requests from a student or from any district for exchange of students between the Herndon AVTS and any other AVTS. (Sheets Depo. at 54).

In 1980, the Office for Civil Rights conducted an on-sight review and investigation of the Herndon AVTS and concluded the vocational-technical programs were being provided in compliance with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964. (P. Ex. 453). There is no showing that the racial composition of the student enrollment at the Herndon AVTS has had any effect upon the racial composition of any defendant school district.

In regard to H.B. 171, the Raytown Board of Education voted in 1956 to request an opinion from the Attorney General whether any part of its district would be absorbed into the KCMSD if the City's population exceeded 500,000. (P. Ex. 2191). No evidence exists, however, relating this request to other than racially neutral concerns over local control and administration.

The Raytown School District opposed the Spainhower recommendations not because of any racial animus, but because it was not administratively feasible. (Herndon Depo. at 71-72).

While the records indicate Raytown has hired few black faculty, (P. Ex. 1002), plaintiffs have not established the number of blacks who actually applied for employment with the district. Instead, they rely upon the statistical analysis of Dr. Carlson who computed faculty availability for the entire SMSA. (P. Ex. 721). (*See* general findings *supra*). Plaintiffs have not established with credible evidence that there was any racial discrimination in the district's employment decisions. (P. Ex. 2967).

In regard to housing, the Court finds there is no credible evidence that the Raytown School District took any action or position which prevented any black family from moving to that district. (Herndon Depo. at 22, 41, Atkin Depo. at 141). Nor is there any credible evidence that Raytown took any action or position which enticed or lured any white family from the KCMSD to Raytown. The map prepared by Dr. Tobin, (P. Ex. 22), shows that there were racially restrictive covenants in the Raytown School District, but there is no evidence which tends to prove that the district had any complicity in the placement or enforcement of those covenants nor is there any evidence that any black family failed to move to Raytown because of those covenants. The continued increase in the number of blacks enrolled in Raytown (P. Ex. 53G, and Ex. 1001), is convincing evidence that there is no barrier to blacks moving to the Raytown School District nor is there any present effect of any past practices which may have had a discouraging effect on black moves.

While there was some evidence that the Raytown area has a reputation of being inhospitable to blacks, (*see, e.g.*, Cleaver's testimony), plaintiffs adduced absolutely no evidence that the school district or its officials caused or contributed to cause that reputation.

The only position which the Raytown district took with respect to any housing or zoning matters was its opposition to trailer courts because of their taxation as personalty rather than realty. (Herndon Depo. at 40-41).

There is simply no evidence that the Raytown School District engaged in any conduct relating to housing matters which had the intent or effect of affecting the racial composition of the student enrollment in the Raytown District or in any other defendant school district.

Having failed to establish any intentional racially discriminatory acts or omissions by these defendants which have had a substantial segregative impact on any other district, the Court will grant the Rule 41(b) motion filed by the Raytown School District and its Superintendent.

CONCLUSION OF LAW

For ease of discussion and understanding, various legal standards have been included in the pertinent fact-finding sections of this order *supra*. They are hereby incorporated as conclusions of law. In some instances, only brief remention of certain cases may be made.

As indicated earlier, the touchstone of an interdistrict school desegregation case is *Milliken* v. *Bradley*, 418 U.S. 717 (1974). *Milliken* teaches that before district boundaries may be ignored or school districts consolidated for remedial purposes, there must be evidence of a constitutional violation in one district that produces a significant segregative effect in another district. The racially discriminatory acts must be a substantial cause of interdistrict segregation. 418 U.S. at 744-45. The absence of an interdistrict violation and interdistrict effect requires interdistrict relief to be denied. *Id.*

The theories offered here have been considered—and rejected—by the Supreme Court in *Milliken*. For example, upon finding violations within the predominantly black city district but not in the surrounding predominantly white suburban districts, the Court declared, "Where the schools of only one district have been affected, there is no constitutional power in the courts to decree relief balancing the racial composition of that district's schools with those of the surrounding districts."

418 U.S. at 749. After assessing the evidence, the Supreme Court held, "Disparate treatment of white and Negro students occurred within the Detroit school system, and not elsewhere, and on this record the remedy must be limited to that system." *Id.* at 746. To award the relief plaintiffs seek here would be contrary to the express mandate from the High Court because it "would impose on the outlying districts, not shown to have committed any constitutional violation, a wholly impermissible remedy based on a standard not hinted at in *Brown I* and *II* or any holding of this Court." *Id.*

The cause and effect nexus cannot be overemphasized. As the Fifth Circuit recognized, "[t]he court's deliberate choice [in *Milliken*] of phrases such as 'substantial' or 'direct cause' and 'significant segregative effect' expresses an insistence that in cases where an interdistrict remedy is requested, there must be clear proof of cause and effect and a careful delineation of the extent of the effect." *Lee* v. *Lee County*, *supra*, 639 F.2d at 1256. Not only is plaintiffs' evidence here blurred as to cause and effect, there is no "careful delineation of the extent of the effect."

Another recent Fifth Circuit decision elaborated on the Supreme Court's requirement of an "interdistrict violation": "The requisite segregative intent must be not simply to discriminate within the offending system but further a clear intent to cause segregative effects within the neighboring district." *Taylor* v. *Ouachita Parish School Board*, 648 F.2d 959, 969 (5th Cir. 1981). As clearly evident by the findings of fact made herein, plaintiffs have failed to prove that conduct by *any* SSD met this standard.

Furthermore, the Court has rejected plaintiffs' "effects" argument which would have held the SSDs liable and incorporated them in an interdistrict remedy on the basis of alleged wrongs committed by other actors, e.g., the state. The *Taylor* court also rejected the "effects" argument reasoning if:

> [i]nterdistrict effect alone transform otherwise intradistrict unconstitutional actions into an interdistrict violation, then the *Milliken* insistence that 'without an interdistrict violation and interdistrict effect, there is no constitutional wrong calling for an interdistrict remedy' contains a redundancy: the only interdistrict thing about the violation would be its effect.

648 F.2d at 969.

As articulated in *Columbus Board of Education* v. *Penick*, to make out a fourteenth amendment equal protection claim, plaintiff *must* show a discriminatory purpose, not just disparate impact and foreseeable consequences. 443 U.S. 449 (1979). Plaintiffs' evidence simply does not make the intentional cause and effect connection.

This Court is compelled to follow the frequent admonition from the Supreme Court to tailor the remedy to fit the scope of the violation. *Dayton Board of Education* v. *Brinkman*, 443 U.S. 526 (1979) (Dayton II), *Hills* v. *Gautreaux*, 425 U.S. 284, 293-94 (1976), *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 16 (1971). The Court in *Dayton* specifically criticized the lower court for aggregating a series of violations to add up to a significant "cumulative" violation—a procedure plaintiffs would have us adopt here. The Court notes *Dayton* was not an interdistrict case; however, the message gleaned is to correct only the violations found, and nothing more expansive is justified or permissible. Therefore, the constitutional violation must be substantial. Neither cumulative nor *de minimus* violations will justify interdistrict relief. 433 U.S. 406, 413 (Dayton I). At most, plaintiffs' evidence is only *de minimus* and is therefore legally insufficient to justify the relief sought against the suburban school district defendants.

A review of the legal standards applicable to various issues raised by plaintiffs confirms the Court's conclusion.

Pre-1954

The parties stipulated to the existence of the state mandated dual school system and the Court took judicial notice of the fact that private discrimination and segregation were prevalent in years past. Nonetheless, plaintiffs presented months of testimony regarding discriminatory conditions existing from the turn of the century to the *Brown* decision in 1954. For the Court today to find a constitutional violation based on that evidence, however, plaintiffs needed to prove by a preponderance that the SSDs were the original segregative actors and that vestiges of those past acts remain. It is in this latter respect that plaintiffs' proof floundered. Regarding physical segregation in schools during the early decades of this century, the Supreme Court stated "[b]oth by reason of the substantial time that [had] elapsed and because these practices have ceased, . . . the foregoing will not necessarily be deemed to be evidence of a continuing segregative policy." *Dayton I*, *supra*, 433 U.S. at 411. The Court has found no continuing segregative policy by these defendants.

Another factor negating the importance of plaintiffs' voluminous pre-1954 evidence is simply its age. Our society is dynamic; myriad factors produce a multitude of simultaneous decisions and consequent effects. If it were a stagnant entity, the pernicious effects of de jure segregation would be obvious. Due to its fluid nature, however, acts now 30 years past have negligible present effects. Such is the fate of the discriminatory practices plaintiffs took months to develop. Too many events have intervened, reshaping earlier actions. *Lee* v. *Lee County*, *supra*, 639 F.2d at 1259.

The Brown Duty

Plaintiffs' evidence also supports the Court's conclusion that all SSDs have met their constitutional obligation to operate a unitary school system. That obligation was initially articulated in *Brown II* 349 U.S. at 300: "At stake

is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis." Defendants are required to "make a prompt and reasonable *start* toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner." *Id.* (emphasis added). As the findings in the individual district sections show, each suburban district, within a maximum of four years of *Brown*, was sending its students to school without regard to race. Most districts were doing so within one year of the *Brown* decision. (See individual findings *supra*). Prior to *Brown* and pursuant to state statute, the local school districts had been operating a dual school system. Certainly such prompt action dismantling the dual system following *Brown* was accomplished "with all deliberate speed." 349 U.S. at 301. The duty of each SSD was to dismantle its dual school system; not the dual system in some other district.

And once a racially neutral school system had been established, racial imbalance resulting from other than purposely segregative acts is beyond the authority of the Court to correct. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). *See also Ross* v. *Houston Independent School District*, 699 F.2d 218, 225 (5th Cir. 1983) ("[s]chool officials who have taken effective action have no affirmative 14th amendment duty to respond to the private actions of those who vote with their feet.") The constitution does not compel school officials to correct conditions over which they have no control, like residential choices. *Berry* v. *School District*, 442 F.Supp. 1280, 1326 (W.D. Mich. 1977) *aff'd* 698 F.2d 813 (6th Cir.), *cert. denied* 104 S.Ct. 235 (1983). The Court well remembers the observation of the Supreme Court that there is just so much baggage that a school case can carry. *Swann, supra*, 402 U.S. at 22-23. Moreover, evidence of housing discrimination was presented in the *Milliken* case and discussed in the concurring and dissenting opinions (418 U.S. at 753, 757, 762 & 781) yet

the majority opinion was based on findings regarding conduct by school officials, not housing actors.

Housing

Plaintiffs, however, relying on certain language in Justice Stewart's concurring opinion in *Milliken*, seek to encompass the SSDs in an interdistrict remedy because of an alleged nexus between housing discrimination and school segregation. Justice Stewart indicated an interdistrict remedy might be imposed "[w]ere it to be shown, for example, that state officials had contributed to the separation of the races . . . by purposeful, racially discriminatory use of state housing or zoning laws. . . ." 418 U.S. at 755. He also stated, however, that the existence of a predominantly black school population in the city "core" cannot be changed by federal courts "unless and until it is shown that the State or its political subdivisions, have contributed to cause the situation to exist." 418 U.S. at 756 n.2. Therefore, even applying the standards suggested by Justice Stewart, plaintiffs either had to prove intentional segregative acts by each school board sought to be included or that the SSDs were mere agents of the state causing alleged constitutional violations by the state to vicariously inure to the SSDs.

Plaintiffs proved (if such proof was necessary) that there is a nexus between housing patterns and school composition. The two are inextricably intertwined:

> People gravitate toward school facilities, just as schools are located in response to the needs of the people. The location of schools may thus influence the patterns of residential development of a metropolitan area and have important impact on composition of inner city neighborhoods.

Swann, 402 U.S. at 20-21. However, proof of the connection alone is insufficient to find liability. And plaintiffs' evidence of segregative *acts by the SSDs* was anemic.

As already discussed, within a few years of *Brown*, each SSD was operating a unitary school system. The post-*Brown* actions purportedly evidencing "vestiges" of segregative intent, (for example support or opposition to legislative proposals, zoning changes, trailer parks, apartments and annexations) hardly support an inference of a constitutional violation by the SSDs much less an explicit finding of a *substantial* constitutional violation.

As discussed earlier, to find the SSDs vicariously liable for acts of the state, the Court must make the threshold determination that the SSDs are mere agents or arms of the state and not independent, locally autonomous entities. After applying the test for autonomy as directed by *Milliken*, the Court already concluded the SSDs are independent and their boundaries must be respected.

Whether plaintiffs' evidence was sufficient to sustain a finding of liability against other actors in the housing market is irrelevant to the instant motions to dismiss filed by each SSD defendant. The nexus necessary must be between the conduct of the defendant school districts and actions of those responsible for shaping residential patterns. The absence of such a connection forbids a finding of liability against the SSDs to remedy any racial imbalance that may be attributed to those housing market actors. *Bell* v. *Board of Education*, 683 F.2d 963 (6th Cir. 1982).

Faculty

The Court has already found that the faculty and staff composition of the SSDs does not affect the racial composition of the student bodies therein. The Court noted that any intradistrict or purported employment violations have no relevance unless shown to have an interdistrict effect. Furthermore, the evidence did not even support a finding of intradistrict discriminatory hiring or promotion policies by the SSDs. The duty, which each SSD has fulfilled, is to make a sustained good faith effort

to recruit minority faculty members, *Oliver, supra,* 706 F.2d at 762.

The Court refuses to apply an intradistrict factor, faculty imbalance, (*see e.g. Swann, supra,* 402 U.S. at 18-20), and conclude therefrom that an interdistrict violation exists. There is simply no law to support plaintiffs' proposition.

Furthermore, as evidenced by the SSDs' answers to interrogatories, the districts have been hiring on a racially neutral basis for many years thus weakening any effect the past dual school system may have had. *Dayton I, supra,* 433 U.S. at 411.

Findings by Other Courts

The findings made herein are wholly consistent with the law as applied in this Circuit. Probably the most distinguishing feature between this and the *Liddell* litigation is the fact that no trial, resulting in a finding of liability against the suburban districts, was ever held. A plan was devised to remedy school segregation existing within the city schools in which the state was to fund a portion. Regarding the suburban districts, however, the plan could only provide incentives for their *voluntary* cooperation:

> [T]he district court can require existing defendants —the state and city school board—to take the actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools, including actions which may involve the *voluntary* participation of the suburban schools. For example, the district court could
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> * * * *
>
> (4) require the state to provide additional incentives for *voluntary* interdistrict transfer.

Liddell v. *Board of Education*, 677 F.2d 626, 641-42 (8th Cir.) (Liddell V) *cert. denied*, 103 S. Ct. 172

(1982) (emphasis added). As the Eighth Circuit commented,

> Many of these ideas and techniques require cooperation by the suburban schools, others do not. To the extent that suburban schools are *willing to cooperate*, the plans requiring their participation can now go forward. To the extent they are unwilling to do so, the 12(c) plans must be tailored to be effective without their mandated participation. We emphasize that suburban schools that *voluntarily* participate will not by such participation admit liability or waive any right that they may presently have to be excluded from a plan of mandatory interdistrict desegregation.

Id. at 642 (emphasis added). The ruling is abundantly clear that absent a finding of liability on the part of each SSD, they cannot be compelled to participate in an interdistrict plan; only by their voluntary cooperation could interdistrict transfers be considered. The *Liddell* court did conclude that because the state was the primary constitutional violator, mandating that it fund voluntary interdistrict transfers was settled as the "law of the case." *Liddell* v. *Board of Education*, No. 83-1957 slip op. at 28 (8th Cir. Feb. 8, 1984) (Liddell VII). Such is not the issue nor posture of the case here.

Comparison of this increasingly familiar record with other cases in which an interdistrict remedy was found appropriate confirms the Court's decision that the requested relief must be denied. The Court in *Berry* v. *School District*, 698 F.2d 813 (6th Cir.) *cert. denied* 104 S.Ct. 235 (1983), *Evans* v. *Buchanan*, 393 F.Supp. 428 (D. Del. 1975), *aff'd mem.*, 423 U.S. 963 (1975), and *Newburg Area Council* v. *Board of Education*, 510 F.2d 1358 (6th Cir. 1974) *cert. denied*, 421 U.S. 931 (1975) all found the local districts were not autonomous (unlike in Missouri). Here, the SSDs do not ignore their district lines although they do cooperate with other

locally autonomous districts to provide educational opportunities for their students. (*See, e.g.*, "Special Education" and "Vocational Education" sections *supra*).

As discussed earlier, plaintiffs' reliance on the older Eighth Circuit cases of *Morrilton*, *Kinloch*, and *Haney* is misplaced because those cases involve racial gerrymandering of school district lines, an issue absent here. Likewise, plaintiffs' reliance on the Indianapolis and Pennsylvania cases is inappropriate because there, state legislation having obvious multidistrict racial effect was found as the basis for interdistrict relief. *See, United States* v. *Board of School Commissioners*, 637 F.2d 1101 (7th Cir.) *cert. denied* 449 U.S. 838 (1980) and *Hoots* v. *Pennsylvania*, 672 F.2d 1107 (3rd Cir.) *cert. denied*, 103 S.Ct. 55 (1982).

Recent cases applying the interdistrict standards of *Milliken* have summarily rejected all-encompassing allegations unsupported by evidence of significant interdistrict violations. *See, e.g., Bronson* v. *Board of Education*, 578 F.Supp. 1091 (S.D. Ohio 1984), *Goldsboro City Board of Education* v. *Wayne County Board of Education*, No. 81-43-CV-8 (E.D.N.C. June 10, 1983), and *Armour* v. *Nix*, No. 16708 (N.D. Ga. Sept. 24, 1979) *aff'd mem.*, 446 U.S. 930 (1980). The similarity between plaintiffs' theories and evidence in those cases and the case at bar confirms the Court's conclusions herein. Even if the Court were to view plaintiffs' evidence liberally, which under Rule 41(b) it is not required to do, the violations proved are at most, *de minimus* and far removed in time. Therefore, interdistrict relief must be denied and the Rule 41(b) motions of the SSDs granted.

Accordingly, it is hereby

ORDERED that the Rule 41(b) motions filed by the following school districts and their superintendents are granted: Blue Springs Reorganized School District R-IV,

Center School District No. 58, Fort Osage Reorganized School District R-1, Grandview Consolidated School District No. 4, Hickman Mills School District, Independence School District, Lee's Summit Reorganized School District R-VII, Liberty School District, North Kansas City School District, Park Hill Reorganized School District No. 5, and the Raytown Consolidated School District No. 2.

/s/ Russell G. Clark
RUSSELL G. CLARK
Chief Judge
United States District Court

Dated: June 5, 1984